

BEFORE THE

PUBLIC SERVICE COMMISSION OF WISCONSIN

APPLICATION FOR A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY OF)	Docket No.
BADGER HOLLOW SOLAR FARM, LLC, TO)	
CONSTRUCT A SOLAR ELECTRIC GENERATION)	9697-CE-100
FACILITY, TO BE LOCATED IN IOWA)	
COUNTY, WISCONSIN)	

APPLICATION FOR A CERTIFICATE OF)	
PUBLIC CONVENIENCE AND NECESSITY OF)	Docket No.
BADGER HOLLOW SOLAR FARM, LLC, TO)	
CONSTRUCT AN ELECTRIC TIE LINE TO)	9697-CE-101
CONNECT A SOLAR ELECTRIC GENERATION)	
FACILITY TO THE EXISTING TRANSMISSION)	
SYSTEM, TO BE LOCATED IN IOWA COUNTY,)	
WISCONSIN)	

EXAMINER MICHAEL NEWMARK, PRESIDING

Tr. 45-234 PARTY HEARING SESSION

Reported By:

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ORIGINAL
TRANSCRIPT

HEARING HELD:

January 16, 2019
Public Service Commission
Madison, Wisconsin

10:00 a.m.

EXHIBITS:

Hankard 2, MaRous 2,
Litchfield 20, 21
Palmer 6

A P P E A R A N C E S

ON BEHALF AMERICAN TRANSMISSION COMPANY

American Transmission Company, by PATRISHA A. SMITH,
W234 N2000 Ridgeview Parkway Court, Waukesha, WI 53188

ON BEHALF OF BADGER HOLLOW SOLAR FARM, LLC

Reinhart Boerner Van Deuren SC, by MR. PETER GARDON
and MR. BRYAN NOWICKI, 22 East Mifflin Street, Suite 600,
P.O. Box 2018, Madison, WI 53701

ON BEHALF OF CASEY AND BRENDA KITE

St. Marie Boll LLC, by MS. DANIELE ST. MARIE
THOMPSON, 10 East Doty Street, Suite 617, Madison, WI
53703

ON BEHALF OF ITC MIDWEST, LLC

Briggs and Morgan PA, by MS. VALERIE HERRING,
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55402

ON BEHALF OF CLEAN WISCONSIN

Clean Wisconsin, by MS. KATHRYN NEKOLA, 634 West
Main Street, Suite 300, Madison, WI 53703

(Continued)

1 ON BEHALF OF CITIZENS UTILITY BOARD

2 Citizens Utility Board, by MS. KATE HANSON, 6401
3 Odana Road, Suite 24, Madison, WI 53719

4

5 ON BEHALF OF JEWELL JINKINS INTERVENORS

6 Legalectric, by MS. CAROL A. OVERLAND, 1110 West
7 Avenue, Red Wing, MN 55066

8

9 ON BEHALF OF WISCONSIN INDUSTRIAL ENERGY GROUP

10 Heinzen Law SC, by MR. STEVE HEINZEN, 2 East Mifflin
11 Street, Suite 402, Madison, WI 53703

12

13 ON BEHALF OF DAIRYLAND POWER COOPERATIVE

14 Wheeler Van Sickle and Anderson SC, by MR. JASON
15 CHASCO, 44 East Mifflin Street, Suite 1000, Madison WI
16 53703

17

18 ON BEHALF OF THE COMMISSION STAFF

19 MR. ANDREW CARDON, Legal Counsel

20 MR. MARK RUSZKIEWICZ, Legal Counsel

21

22 COMMISSIONERS ELLEN NOVAK and REBECCA VALCQ

23

24 (FOR INDEX PLEASE SEE BACK OF TRANSCRIPT)

25

1 (Discussion off the record.)

2 EXAMINER NEWMARK: Let's get on the record
3 and talk about Litchfield 18.

4 MR. NOWICKI: Your Honor, we're
5 withdrawing that exhibit.

6 EXAMINER NEWMARK: Okay. Fine. Thanks.
7 Let's get off the record then.

8 (Discussion off the record.)

9 EXAMINER NEWMARK: So we have the first
10 item for the JJI, the Jewell Jenkins Intervenors
11 written testimony, first issue is that we just want
12 the documents in each docket to have the title of
13 that docket. So you put the double dockets on all
14 the filings, but we just want 101 in the 101 case
15 and 100 in the 100 case. But that's not the real
16 issue, the real problem.

17 So the -- we have a motion from the
18 applicant, and JJI has responded to that. But I
19 was -- also had inclinations when I saw the filing
20 that there -- my impression was, when I read the
21 direct initially, that Jewell Jenkins Intervenors
22 were intervened and was accepted as a party as what
23 they had -- according to how they filed for a
24 request to intervene which was as individuals acting
25 together. And I don't think we need to characterize

1 it as some sort of group; but, I mean, I've seen
2 people participate in Commission cases as
3 individuals acting together and we accept them in
4 that capacity.

5 Then it came as a surprise to me to see
6 the direct testimony filed on behalf of -- or filed
7 by JJI Incorporated, and then the testimony then
8 being offered by Mr. Jewell as president of the
9 corporation came as a surprise to me. And since
10 that time, except for very recently, there's been no
11 move on the Jewell Jenkins Intervenors to change the
12 status of the parties as individuals acting
13 together.

14 And in terms of issues like discovery and
15 who to serve and how to go about practice before the
16 hearing, I was kind of confused and was basically
17 treating the -- the way the testimony was written,
18 treating the indication of the JJI Incorporated as
19 essentially a mistake, a mistake in filing, that can
20 be corrected by simply replacing JJI Incorporated
21 with JJI representing the individuals acting
22 together.

23 That's still my inclination after reading
24 the motions and the responses to that. I don't
25 think it's -- we should go as draconian as a result

1 of striking all testimony because it was filed by
2 essentially a non-party, JJI Incorporated; but I
3 believe to be consistent with our practice and
4 preserve the rights and responsibilities of everyone
5 who had intervened initially in the case, that we
6 need to correct the filing of JJI to indicate that
7 they're not participating as a corporation, they're
8 participating as individuals acting together like
9 they had -- as they had filed and were accepted as a
10 party.

11 So I wasn't going to get into all of that
12 until I asked for any other opinions, but I guess I
13 already gave you my decision. I guess I could offer
14 an opportunity again to try to convince me
15 otherwise, but I'm pretty set on this. So I don't
16 think it really burdens or prejudices anyone to
17 change, you know, the words of the testimony, keep
18 all the substance in the testimony. So I'm just
19 going to go ahead and ask you to re-file with that
20 in mind. So we don't change pagination, you can
21 just basically just black out the words -- or you
22 have to replace some words, I suppose.

23 MS. OVERLAND: I can deal with pagination.
24 I just want to clarify. The words you're looking
25 for, as individuals acting together, that's, like,

1 the key --

2 EXAMINER NEWMARK: Well, I guess that's
3 how I tried to characterize it today. But really no
4 magic words are necessary. Just take out references
5 to the corporation. And if you look at how you
6 filed the request to intervene, you listed the names
7 individually, and that's acceptable. So -- and then
8 you said these individuals, we can call them Jewell
9 Jenkins Intervenors; and that's how I was referring
10 to them. When I say Jewell Jenkins Intervenors, I
11 was referring to them as the three families acting
12 together but as individuals, not as, you know, a
13 separate corporate entity.

14 MS. OVERLAND: Okay.

15 EXAMINER NEWMARK: So as long as we take
16 out the references to the corporation, I think the
17 problem goes away as far as I can see. I don't know
18 if there was any disputed discovery where someone
19 was asking the individuals for an answer and then,
20 you know, the corporation said, no, you're not --
21 this is not pertaining to the corporation, it's
22 pertaining to individuals. As long as that didn't
23 happen and the process seems solid, that's okay.

24 MS. OVERLAND: No problem.

25 EXAMINER NEWMARK: So that's all I really

1 need to say on that. I believe -- I know applicants
2 had filed to strike the rebuttal as well. But I
3 believe there's no real reference to the corporation
4 in the rebuttal as far as I -- just scanning through
5 it. I think it was Mr. Jenkins speaking, but I
6 don't think he mentioned the corporation.

7 So I would say, you know, take out any
8 reference to the corporation in both filings if
9 there is any. But I think the rebuttal is probably
10 okay the way it is.

11 MR. NOWICKI: We moved to strike -- or
12 objected to the rebuttal just because of the lack of
13 clarity put into the record. So I think the
14 re-filing of the rebuttal with that clarity is going
15 to be appropriate just like you ordered for the
16 direct.

17 EXAMINER NEWMARK: All right. So we can
18 move on from that bullet point. Basically
19 there's -- that paging needs to change to match our
20 standard.

21 MS. OVERLAND: Your Honor, I missed that
22 turn.

23 EXAMINER NEWMARK: Go ahead. I'm sorry?

24 MS. OVERLAND: I missed that turn where
25 you were headed.

1 EXAMINER NEWMARK: Oh, yeah. See, these
2 mics don't pick up everything. Yeah, just -- okay,
3 so we just put the number right after Jewell. You
4 don't need this page 3. You're re-filing anyway; so
5 just when you do that, just do it to our standard.

6 MS. OVERLAND: Okay. I get it.

7 EXAMINER NEWMARK: Another issue with this
8 filing is the EA. Now, we do have a final EA on --
9 that's been offered. I'm just not sure, do you
10 need -- let me ask staff, probably do this off the
11 record.

12 (Discussion off the record.)

13 EXAMINER NEWMARK: So Exhibit JJI
14 Jewell 6, that was eliminated from ERF along with
15 Litchfield 18 because I had questions about
16 copyright infringement and I don't know if
17 there's -- I know one document in Jewell 6 is a
18 public document or it's an available open source
19 document, but the other may not be. And also just
20 the way it's being used in testimony, it's hard to
21 tell with the volume of that document what the
22 Commissioners are supposed to get from that exactly,
23 what you want them to know. So it's basically I was
24 saying too voluminous to have probative value.

25 So if there's a way to, you know, you can

1 either pick out excerpts that you want the
2 Commissioners to bring their attention to for the
3 document that's open source, we could do that.
4 Otherwise, I was just going to keep it out. And I
5 guess there's also live links in the document, you
6 need to delete that. So basically I'm not really
7 sure what we have -- what would go in the record at
8 this point for that exhibit.

9 MS. OVERLAND: Your Honor, I have an idea.

10 EXAMINER NEWMARK: Yes.

11 MS. OVERLAND: What if it were the
12 comment, eliminating the live links and eliminating
13 the --

14 EXAMINER NEWMARK: Attachments.

15 MS. OVERLAND: -- attachments.

16 EXAMINER NEWMARK: So just the EA --
17 comment on the EA?

18 MS. OVERLAND: Right. It's the guts of
19 the comment that are important.

20 EXAMINER NEWMARK: Okay. So I don't have
21 a problem with that, except I don't know if the
22 testimony -- I mean, is there something the witness
23 can say about it that would -- it's a huge document,
24 so I'm just -- it's -- okay, well, I guess it's a
25 comment on EA. We can leave it at that. Okay. So

1 7 will be okay. 8 is okay. 9 is okay. 10, 11, 12,
2 I forgot to put on the list, but they should be.

3 MS. OVERLAND: Oh, Your Honor. 9 is one
4 that can be eliminated because it was unanswered in
5 discovery at the time, but it's been answered.

6 EXAMINER NEWMARK: Okay.

7 MS. OVERLAND: So we would withdraw it.

8 EXAMINER NEWMARK: All right. And then
9 you would have to change the testimony as well.
10 Would that cause a major problem?

11 MS. OVERLAND: No. No more than...

12 EXAMINER NEWMARK: Anything else.

13 MS. OVERLAND: Exactly.

14 EXAMINER NEWMARK: So withdrawn. Okay.
15 So let's turn to the Kites.

16 MS. OVERLAND: Your Honor, that's where --
17 10, 11 and 12 were missing; and I don't know if that
18 was me or --

19 EXAMINER NEWMARK: It was a mistake on the
20 document. So they'll go in, yeah, once I correct
21 the document.

22 MS. OVERLAND: Okay.

23 EXAMINER NEWMARK: So with Kite, it's
24 basically some, you know, mis-filing, filing errors.
25 Any questions about that?

1 MS. THOMPSON: I think we already covered
2 that question about Exhibit 4 that I'll bring in.

3 EXAMINER NEWMARK: Yes.

4 MS. THOMPSON: And then the question
5 regarding any letters that are now currently in the
6 record. So I think the other things were clear
7 enough.

8 EXAMINER NEWMARK: So what exhibit, is
9 that some of the applicant exhibits?

10 MS. THOMPSON: The applicant included the
11 Iowa County comprehensive plan, but started at a
12 particular section, Section C, and they labeled
13 through and it was my belief the whole thing was in.
14 When I double-checked it, they didn't include the
15 entire thing. So I can bring in the entire
16 comprehensive plan if that's necessary.

17 I was citing to their actual general
18 comprehensive plan which comes in on page -- like,
19 in the first five pages, whereas the applicant
20 brought in starting at Section C. So I can either
21 bring in the whole thing or just a few pages,
22 whatever you find is necessary.

23 EXAMINER NEWMARK: Yeah, just bring in the
24 whole thing.

25 MS. THOMPSON: That's fine.

1 EXAMINER NEWMARK: And there's the
2 letters --

3 MS. THOMPSON: Those are in now.

4 EXAMINER NEWMARK: They're in now. Okay.
5 Do you know the exhibits?

6 MS. THOMPSON: Those would be the Kites 2
7 and 3.

8 EXAMINER NEWMARK: Okay. 2 and 3. Okay.
9 We'll just leave that then, leave that as it is. So
10 any other questions with just the mundane
11 corrections? No? Okay.

12 MS. THOMPSON: No.

13 EXAMINER NEWMARK: All right. So just a
14 note, on the FEA, that has live links in it, but I
15 won't make you change that. I'll just make a note
16 to everyone that they're on the record. Grant had
17 some minor changes. Any questions there? Same
18 thing with Rahn.

19 MR. RUSZKIEWICZ: Your Honor, I just want
20 to add that I think the footnotes for Mr. Rahn
21 are -- they're just copies of the Grant ones. He
22 actually doesn't have footnotes on those pages.

23 EXAMINER NEWMARK: Well, on the 100 case,
24 he has put the PSC reference number for I think it's
25 the application document. You can take that out.

1 MR. RUSZKIEWICZ: Okay.

2 EXAMINER NEWMARK: Okay. So 101 --

3 MS. OVERLAND: Your Honor, I have a
4 question about FEA.

5 EXAMINER NEWMARK: Yeah.

6 MS. OVERLAND: Is that -- does that also
7 contain in that the final determination letter and,
8 if not, is that part of the record?

9 EXAMINER NEWMARK: The determination not
10 to do an EIS?

11 MS. OVERLAND: Correct.

12 EXAMINER NEWMARK: I don't know. I know
13 that was a separate thing.

14 MR. RAHN: It does.

15 EXAMINER NEWMARK: It does contain that.

16 MR. RAHN: Yeah.

17 EXAMINER NEWMARK: So we'll just go
18 quickly through the 101 case for stuff we haven't
19 touched on already. So the Litchfield 14 --

20 MR. RUSZKIEWICZ: Your Honor, sorry to
21 back up. Just to clarify, the letter that would go
22 out with the final EA, it's our understanding that
23 that's not being added as part of the record, just
24 the EA itself.

25 EXAMINER NEWMARK: Okay. Go ahead.

1 MR. INGWELL: This is the signature that I
2 had signed off on at the end to confirm that
3 original determination. It's not like a separate
4 letter or --

5 EXAMINER NEWMARK: But substantively it
6 says no EIS is required?

7 MR. INGWELL: Correct, correct.

8 EXAMINER NEWMARK: Is that enough? Okay.
9 So Litchfield 14, I guess I had a question with
10 that. It does relate back to his surrebuttal. So
11 it looks like surrebuttal was only to introduce this
12 DPP study?

13 MR. NOWICKI: It was.

14 EXAMINER NEWMARK: Okay. So I --

15 MR. NOWICKI: We did update the
16 application with this previously.

17 EXAMINER NEWMARK: Okay. So I'm not sure
18 if we really need that as a separate exhibit or if
19 it can just be filed as a data request response; and
20 then Commission staff's data request response
21 exhibit will bring it into the record just by
22 reference. So we don't really need to have the
23 formal --

24 MR. NOWICKI: We could try to locate a
25 data request that this would fit to if that's what

1 you're suggesting.

2 EXAMINER NEWMARK: I think --

3 MS. OVERLAND: There is one.

4 EXAMINER NEWMARK: Yeah, I think there is
5 one.

6 MS. OVERLAND: Yes.

7 EXAMINER NEWMARK: So if you want to
8 re-file it as data request response, staff will
9 bring it into the record.

10 MR. NOWICKI: Sure.

11 EXAMINER NEWMARK: So that means we can
12 actually eliminate the surrebuttal Litchfield, I
13 think.

14 MS. OVERLAND: It's number 9.

15 EXAMINER NEWMARK: Yeah. And then
16 Litchfield 14.

17 MS. OVERLAND: Your Honor, they had
18 Exhibit -- Appendix H? I can't remember. There was
19 a placeholder for that document. And could that be
20 added into that in the application? I don't
21 remember which --

22 EXAMINER NEWMARK: Well, that might cause
23 a lot more re-filing. But we can take a look.

24 MS. OVERLAND: Appendix F.

25 EXAMINER NEWMARK: So it's just blank at

1 So everyone did receive a copy.

2 MS. OVERLAND: They did, yeah.

3 EXAMINER NEWMARK: Well, I guess that
4 changes things. Okay. So if you would re-file with
5 the corrections -- or file for the first time with
6 the corrections that we indicated in the 100 docket,
7 I can allow the rebuttal to come in.

8 MR. NOWICKI: Your Honor, I would have to
9 check our filings; but if we submitted surrebuttal
10 to that in the 100 docket, we'd like to submit
11 surrebuttal in the 101 docket.

12 EXAMINER NEWMARK: Of course. Yeah. We
13 can just make that available until Monday when
14 re-filings are due. And so we'll take the other
15 exhibits as well. I think that's 8 through 12. So
16 I think I have everything else. I did have -- yes,
17 I did misstate corrections on Rahn's direct in the
18 101 docket.

19 I think that's it. We've gotten through
20 probably half the hearing. But I want to make sure
21 we get the right documents in and that they're filed
22 correctly. So it does take -- it takes time to do
23 that. So anything else we need to handle
24 preliminarily? Did I cover all the motions? I want
25 to make sure I got them all.

1 MR. NOWICKI: Yes.

2 EXAMINER NEWMARK: All right. Good.

3 Nothing else? We're going to take a brief recess
4 and provide an opportunity for Commissioners to come
5 down if they want to do that. So I'd say let's just
6 give them ten minutes. We can start again at 11.

7 (Recess taken from 10:50 to 11:00 a.m.)

8 EXAMINER NEWMARK: Let's get started with
9 the substance of the case. Gratefully we're done
10 with the rest. We covered motions and preliminary
11 activities, so we can start calling witnesses.
12 We'll start with the applicant.

13 MR. NOWICKI: Thank you, Your Honor. The
14 applicant calls Dan Litchfield.

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1 DANIEL LITCHFIELD, APPLICANT WITNESS, DULY SWORN

2 EXAMINER NEWMARK: Just so you know, we
3 can talk about both dockets simultaneously,
4 interchangeably. We're here for both. So you don't
5 have to do them separately.

6 MR. NOWICKI: Your Honor, I was going to
7 ask him to confirm his filings in each of the
8 dockets.

9 EXAMINER NEWMARK: Yes.

10 MR. NOWICKI: If I could just ask him to
11 confirm for the 100 and the 101 for that purpose.

12 EXAMINER NEWMARK: Perfect.

13 DIRECT EXAMINATION

14 BY MR. NOWICKI:

15 Q Mr. Litchfield, can you please state your name.

16 A Daniel Litchfield.

17 Q And how are you employed?

18 A I am a director of renewable development for
19 Invenergy.

20 Q Have you prepared and caused to be filed in the 100
21 docket direct, rebuttal and surrebuttal testimony?

22 A Yes, I have.

23 Q And did you file with your direct testimony eight
24 exhibits?

25 A Yes.

1 Q And with your rebuttal testimony nine exhibits of
2 which Exhibit No. 18 has been withdrawn?

3 A Yes.

4 Q And in the 101 docket, Mr. Litchfield, did you
5 prepare and cause to be filed direct and rebuttal
6 testimony?

7 A Yes, I did.

8 Q Okay. And with the direct testimony, did you cause
9 eight exhibits to be filed?

10 A Yes.

11 Q And with the rebuttal testimony, did you cause six
12 additional exhibits to be filed?

13 A Indeed.

14 Q If I asked you the questions set forth in the
15 testimonies I've described today, would your answers
16 be the same as set forth in your prefiled testimony?

17 A Yes.

18 MR. NOWICKI: Your Honor, I'd move for the
19 incorporation of Mr. Litchfield's testimony and
20 those identified exhibits into the record.

21 EXAMINER NEWMARK: Okay. Can we just
22 verify the exhibits. Are the exhibits you filed
23 complete and correct to the best of your knowledge?

24 THE WITNESS: Yes.

25 EXAMINER NEWMARK: Yes. Okay. Thanks.

1 Yes.

2 MR. NOWICKI: Thank you, Your Honor.

3 EXAMINER NEWMARK: And I should say, just
4 as a blanket concept, that all the documents we
5 covered that are on the list and should be on the
6 list are in the record pending verification and
7 corrections. So you don't really need to ask
8 them -- you don't really need to ask me to put them
9 in. They're in as soon as we get the right version
10 and as long as the witness is verifying them today.

11 MR. NOWICKI: Okay.

12 EXAMINER NEWMARK: Okay.

13 MR. NOWICKI: Thank you.

14 Q Mr. Litchfield, I have a few questions for you that
15 addresses the surrebuttal testimony of other
16 witnesses. First, the surrebuttal I'd like you to
17 address was that filed by Mr. Kurt Kielisch on behalf
18 of the Kites.

19 I believe you have a binder up at the
20 witness stand that includes Mr. Kielisch's
21 surrebuttal testimony. I'd like to invite your
22 attention to page 2, lines 9 through 11, of that
23 testimony.

24 A I see it.

25 Q Okay. At that point or during that portion of his

1 testimony, Mr. Kielisch states that Mr. Litchfield
2 has negotiated an agreement as it relates to the
3 local operating agreement in which the setbacks could
4 be as close as 50 feet to the Kites' property line.
5 Did I read that correctly?

6 A You did read that correctly.

7 Q Do you agree that the project could be sited as close
8 as 50 feet to the Kites' property line?

9 A No, I do not. Because we no longer lease the parcel
10 adjacent to the Kites.

11 MS. THOMPSON: Objection, that agreement
12 specifically states in Section 22 that it can be as
13 close as 50 feet to any residential landowner's
14 property line. They are within the property
15 boundaries. The property boundaries have not been
16 finalized and confirmed. As a result, there is a
17 potential for panels to be located within 50 feet of
18 any residential property line in the boundary.

19 MR. NOWICKI: Your Honor, I don't think
20 that's an appropriate objection. That's testifying
21 by the attorney. Mr. Litchfield is going to explain
22 with facts what the situation is related to the
23 property line and the setbacks related to the Kites'
24 property.

25 EXAMINER NEWMARK: Okay. I'll overrule

1 the objection.

2 MR. NOWICKI: Thank you, Your Honor.

3 Q Mr. Litchfield, can you describe the arrangements
4 between Badger Hollow and the landowners who own
5 property around the Kites' property as it relates to
6 the project setback from the Kite property?

7 A Yeah. As a result of a number of discussions with
8 the Kite family, we were not able to come to an
9 agreement on the design of the project. We took
10 action to amend the lease with the neighboring
11 landowner, the Kramer family. And the parcel
12 immediately adjacent and surrounding the Kite parcel
13 is no longer under lease by the project, will not be
14 under lease by the project, and thus we cannot
15 construct anything on the parcel.

16 Q Okay. Can you please turn to Exhibit 9 of your
17 testimony.

18 A In the 100 case?

19 Q In the 100 docket, yes.

20 A I'm there.

21 Q Can you describe what Exhibit 9 is.

22 A Exhibit 9 is a letter that we sent to Ms. Thompson in
23 October to restate our intentions to try to resolve
24 the concern of the Kite family and, absent any
25 agreement at that time, notify them that we were

1 amending this lease and we would not be placing any
2 equipment on the Kramer parcel adjacent to the Kites.

3 Q Okay. In the third paragraph of this letter, at the
4 very end, does that letter identify what the setbacks
5 of the project from the Kite property will be?

6 A It does.

7 Q And what are those setbacks?

8 A The western setback was the one that changed, and it
9 increased from about 285 feet to about 1,100 feet.
10 The setback to the north remains about 680 feet. And
11 the setback to the south remains at about 1,400 feet.

12 Q Okay. Thank you. Mr. Litchfield, are you aware that
13 Brenda and Casey Kite filed surrebuttal testimony in
14 this proceeding?

15 A Yes.

16 Q Have you reviewed that testimony?

17 A I have.

18 Q Does that testimony address their interactions with
19 Badger Hollow and their concerns about the project?

20 A It does.

21 Q And how do you respond to those comments on
22 surrebuttal by the Kites?

23 A I think it's unfortunate we hadn't been able to come
24 to a full agreement here. But I'm proud of the
25 efforts we've undertaken, and I think the bottom line

1 is that the project as designed will be amenable to
2 adjacent residents and particularly in the Kites'
3 case with the larger setbacks that we've installed
4 here.

5 Q Thank you. In the surrebuttal by the Kites, page 7,
6 lines 3 to 4, they refer to the LOC and make a
7 reference to whether it will be ratified by the Towns
8 of Mifflin, Eden and Linden. Can you provide an
9 update with regard to the status of the local
10 operating agreement in relation to the towns.

11 A Yeah. As of today, the local operating contract,
12 first of all, has been signed by Iowa County. It has
13 also been signed by the Town of Linden. And the
14 other towns haven't yet, and I anticipate they will
15 in the near future.

16 Q For the Commission, their witness, Grant, filed
17 surrebuttal testimony in this case. Are you familiar
18 with that testimony?

19 A Yes.

20 Q On page 1, lines 12 through the end of that page and
21 on to page 2 to line 15, he addresses stray voltage
22 as a potential condition. Do you recall that
23 testimony?

24 A I do.

25 Q What is Badger Hollow's position with regard to the

1 proposed stray voltage condition?

2 A First of all, we're still very confident that the way
3 the project is engineered, there should not be a
4 stray voltage problem. However, we understand the
5 concerns that some neighbors, particularly dairy
6 farmers, have about stray voltage. And so we would
7 be willing to agree to this type of testing at
8 adjacent dairy facilities within a half a mile of any
9 proposed 138 kV infrastructure as part of our
10 project.

11 Q Okay. Thank you.

12 MR. NOWICKI: Your Honor, Mr. Litchfield
13 is now available for cross-examination.

14 EXAMINER NEWMARK: Okay. So we usually go
15 down the list as we have them on the offered
16 evidence list. So -- and, well, of course, not all
17 parties are on that list, so we'll have to provide
18 for that as well. So we can start with Citizens
19 Utility Board, any questions?

20 MS. HANSON: No questions.

21 EXAMINER NEWMARK: Jewell Jenkins
22 Intervenor?

23 MS. OVERLAND: Yes, questions.

24 EXAMINER NEWMARK: You're next.

25 MS. OVERLAND: I do have a procedural

1 question. I have a number of data requests to enter
2 in; and to facilitate things, I was thinking of
3 passing around a packet.

4 EXAMINER NEWMARK: Yes. Pass out
5 everything you have all at once so people can get a
6 chance to review it. We can go off the record.

7 (Discussion off the record.)

8 EXAMINER NEWMARK: Just give us some
9 background about these -- and we're back on the
10 record. So, Ms. Overland, give us some background
11 about these exhibits.

12 MS. OVERLAND: All right. These are data
13 request from Jewell Jenkins Intervenors. And I'd
14 like to go through them little by little, but I was
15 wondering if we could get a stipulation to entry of
16 these and then discuss them with Mr. Litchfield.

17 EXAMINER NEWMARK: Yeah. Typically we do
18 accept data request responses, discovery responses
19 for the record when provided. So I don't, you know,
20 see an initial issue with this. But, I mean, we can
21 wait until you ask the questions and get them
22 identified by the witness before we enter them into
23 the record.

24 I guess what I'd say is it would be useful
25 if we had the copy with the PSC reference number on

1 it so we know what we're dealing with. But that's
2 okay for now. But these all have been filed on ERF?

3 MS. OVERLAND: Yes, they were. They were
4 filed by the applicants.

5 EXAMINER NEWMARK: Okay. Great. Yeah.
6 So I don't have much else to say here except I
7 suppose -- are you going to be asking different
8 witnesses different -- ?

9 MS. OVERLAND: Well, on these, these are
10 for Mr. Litchfield.

11 EXAMINER NEWMARK: These are all for
12 Mr. Litchfield.

13 MS. OVERLAND: Right. I have them
14 separated out by witness.

15 EXAMINER NEWMARK: So what we'll do is we
16 can mark it at least first so we can refer to it as
17 an exhibit. So it will be Litchfield 20.

18 MS. OVERLAND: For the pile?

19 EXAMINER NEWMARK: Yeah, the whole pile.
20 And so if you would -- if it does get received into
21 the record, we'll just ERF the entire set as
22 Litchfield 20.

23 MS. OVERLAND: Would a reference to the
24 ERF number be useful, the original ERF number?

25 EXAMINER NEWMARK: Okay. When you file,

1 use -- print it off of ERF first and use that
2 version.

3 MS. OVERLAND: The one from ERF is
4 extensive; and these are, like, a small piece of it.

5 EXAMINER NEWMARK: Okay. That's fine
6 then. Okay. So think we're good for now. So go
7 ahead, proceed with your questions.

8 (Exhibit Litchfield No. 20 was marked.)

9 CROSS-EXAMINATION

10 BY MS. OVERLAND:

11 Q Mr. Litchfield, could you take a look at the first
12 two in the pile, data request number 27 and number 9.

13 A Yes, I have them.

14 Q And do you recall these questions and -- well, first,
15 did you respond -- is this your response?

16 A Yes.

17 Q Okay. And do you recall these?

18 A Yes.

19 Q Are you familiar with your surrebuttal that -- in
20 number 101, Docket 101, Exhibit No. 14, the DPP
21 study?

22 A Yes. That was the study that was just completed in
23 December we filed.

24 Q Correct. Now, in the application for 100, there are
25 multiple references to these studies. And the

1 first -- Your Honor, I'd like to offer these, number
2 27 and number 9; and then I would also like to offer
3 somehow the data -- the DPP study that's been entered
4 in number 101 into this docket because of all the
5 references in the application to that study, and
6 because of these data requests.

7 EXAMINER NEWMARK: Okay.

8 MS. OVERLAND: And I will talk with
9 Mr. Litchfield more about the study in a minute.

10 EXAMINER NEWMARK: All right. So let's go
11 off the record for a second.

12 (Discussion off the record.)

13 (Exhibit Litchfield No. 21 was marked.)

14 EXAMINER NEWMARK: Okay. So just to note,
15 Litchfield surrebuttal is not going -- we are not
16 receiving that because that exhibit isn't going in.
17 So Litchfield surrebuttal and Litchfield --

18 MS. OVERLAND: 14, I believe. In 101, 14.

19 EXAMINER NEWMARK: Right. 14 in the 100
20 docket. So don't make references to that. All
21 right. So go ahead.

22 MS. OVERLAND: Okay. Thank you.

23 Q Mr. Litchfield, in the application, there are a
24 number of references to the MISO studies that are
25 coming out. And in the application, can you look at

1 page 40, please.

2 A Page 40 of the application?

3 Q Page 40 of the 100 application.

4 A I don't have it in front of me.

5 Q Would you accept subject to check -- what I'm looking
6 for is the schedule. And would you accept subject to
7 check, without the application in front of you, that
8 the DPP 1 was due November 8th, 2018; DPP 2,
9 February 1st, 2019; DPP 3, June 17th, 2019, this is
10 on page 40 of the 100 application; and then the
11 generation interconnection agreement to be executed
12 11/14/2019?

13 EXAMINER NEWMARK: Let me bring it up
14 here.

15 MS. OVERLAND: It will be the top of
16 page 40.

17 EXAMINER NEWMARK: Of the application, the
18 proper application?

19 THE WITNESS: Your Honor, you might be
20 looking at the 101 application.

21 MS. OVERLAND: It says 100.

22 EXAMINER NEWMARK: It's in the 100. That
23 was 101. Okay. There we go.

24 BY MS. OVERLAND:

25 Q There's the schedule. And then if you look at the

1 schedule provided on -- in answer to number 9, it
2 would be on the second page of number 9.

3 EXAMINER NEWMARK: So that's JJW 9.

4 MS. OVERLAND: JJW number 9.

5 Q And it would be paragraph E. Do you see that
6 schedule there?

7 A I do.

8 Q Okay. Clearly the schedule's changing. Do you know,
9 what would the schedule be? Would it be this
10 schedule in number JJW 9 paragraph E or has it been
11 extended further?

12 A As far as I know, the JJW 9 schedule, the later
13 schedule, is more current.

14 Q Okay. So the next study is due April 1st, 2019; and
15 the generation interconnection agreement, that is
16 expected January 10th, 2020, correct?

17 A That's what it says; and I don't have the current
18 schedule in front of me, but that sounds about right.

19 Q Okay. Thank you. All right. Now, do you have a
20 copy of that DPP study?

21 A I do.

22 Q You do. Okay. Would you turn to page 65, please.

23 A Okay.

24 Q In the middle of the page, do you see where it lists
25 J870 and J871? It would be not the top chart, but

1 that second one.

2 A I do see that.

3 Q And do you see right in the middle of the page where
4 it talks about the maximum -- next column over to it,
5 that column, I can't read it, but the maximum amount?

6 A I do.

7 Q And what are those numbers that are listed as the
8 maximum amount there?

9 A You want me to read the numbers that are on there?

10 Q Correct. Right.

11 A Looks like 264.45 megawatts and 269.07. There's 300
12 listed right below that. I'm not exactly sure what
13 that means.

14 Q That does correspond with the number of megawatts of
15 the application, correct?

16 MR. NOWICKI: Object to form. Which
17 number is she referencing?

18 MS. OVERLAND: Which -- excuse me?

19 MR. NOWICKI: 264, 269 or -- there's three
20 numbers there. Which one are you asking him is
21 consistent with the application?

22 BY MS. OVERLAND:

23 Q Okay. Regarding the application, would you agree
24 that 300 megawatts is the amount of megawatts you
25 have applied for for CPCN?

1 A I would.

2 Q And would you agree that this study shows that that
3 300 megawatts at this point is not -- that the
4 maximum level of service does not reach 300
5 megawatts?

6 A I believe -- I agree the number is less than 300.
7 But I don't think that -- I wouldn't agree with that
8 assertion that it means the project cannot achieve
9 300 megawatts. The process we're going through is to
10 determine what upgrades are necessary for the
11 project's stated size to fit on the grid. And the
12 process will -- first of all, other applicants in
13 this group study may leave the study -- leave the
14 group allowing more capacity for our project
15 potentially. Or the later phases of the study will
16 identify what upgrades are necessary to get to 300
17 megawatts. And we'll be presented with the
18 opportunity of proceeding and funding those. Or at
19 this point in the process, we can shrink the project,
20 both key positions, by up to 10 percent if we wanted
21 to avoid any necessary upgrades.

22 Q Would you agree that the heading in that column says
23 that that includes network upgrades?

24 A I don't see where you're pointing to.

25 EXAMINER NEWMARK: Are you talking about

1 the first column?

2 MS. OVERLAND: I'm sorry. I can't read
3 it.

4 EXAMINER NEWMARK: You don't have a copy
5 in front of you?

6 MS. OVERLAND: It's buried in my computer.
7 So I'm looking.

8 MR. NOWICKI: Your Honor, I'd object that
9 the document speaks for itself whether or not there
10 are those words or not.

11 MS. OVERLAND: Okay. We'll move on.
12 That's okay.

13 EXAMINER NEWMARK: Are you moving on to a
14 different topic?

15 MS. OVERLAND: Different topic.

16 EXAMINER NEWMARK: I just wanted to ask
17 the witness on that string of thought, what is your
18 experience with MISO in terms of having projects
19 hook up at maximum capacity, I guess it is at the
20 rated nameplate capacity versus a lower capacity?
21 You know, how likely is it that Badger Hollow won't
22 be able to meet maximum given the congestion of the
23 system versus being able to meet maximum because of
24 upgrades?

25 THE WITNESS: I don't think there's a

1 generalization that can be made because each group
2 of studies is unique and the process allows for
3 applicants to stay in or leave. I sometimes liken
4 it to a poker game. And we think we have a solid
5 project. We were going to probably plan to stay in
6 as long as it's reasonably possible.

7 EXAMINER NEWMARK: And in your experience
8 with other projects, what has occurred?

9 THE WITNESS: I have limited experience in
10 MISO. But my recent experience is that we have been
11 able to achieve the full megawatts we set out to
12 achieve.

13 EXAMINER NEWMARK: Okay. Thanks. Go
14 ahead.

15 BY MS. OVERLAND:

16 Q One last question about this. Would you agree that
17 in this report it does detail some proposed network
18 upgrades for J870 and J871?

19 A Yes.

20 Q Okay. And moving on to number 16, JJW 16 in the
21 file, also JJW 23. And do you recall writing these
22 answers to these data requests?

23 A I do.

24 Q Were you present yesterday for -- or watching the
25 discussion in yesterday's hearing?

1 A As a matter of fact, I was present.

2 Q Okay. Do you recall the discussions with PSC staff
3 regarding decommissioning and whether a merchant
4 plant has to -- whether the laws regarding
5 decommissioning for utilities applies to merchant
6 plants?

7 EXAMINER NEWMARK: Hang on, let me just
8 state for the record. We may have to reread that
9 question. But when you said yesterday's proceeding,
10 you were talking about what cases?

11 MS. OVERLAND: Oh, it would be cases
12 9696-CE-100 and 9696-CE-101.

13 EXAMINER NEWMARK: Okay. So it's the Two
14 Rivers --

15 MS. OVERLAND: The Two Rivers, correct.

16 EXAMINER NEWMARK: -- solar facility case
17 and then the GenTie case?

18 MS. OVERLAND: Correct.

19 EXAMINER NEWMARK: Okay. So why don't we
20 read back your question.

21 (Question read by the reporter.)

22 BY MS. OVERLAND:

23 Q Do you recall that discussion?

24 A I do not recall that discussion.

25 Q Is it your understanding that decommissioning -- oh,

1 no. I'm off there. Strike all of that. We'll start
2 over again.

3 Regarding decommissioning, has there been
4 a decommissioning plan submitted for this project?

5 A We have not submitted a standalone decommissioning
6 plan document. We have described decommission
7 activities within our application, and I believe we
8 have committed to submit a site specific
9 decommissioning plan prior to construction.

10 Q Has Invenergy in the past -- have you first, have you
11 done decommissioning plans for other projects in
12 association with your work at Invenergy?

13 A No, I have not. Sorry. No, I have not for solar.

14 Q Have you -- for what types have you worked on
15 decommissioning plans?

16 A I've had a limited supervision of a decommissioning
17 program for a wind farm in South Dakota.

18 Q Okay. Would you agree that the termination clause in
19 your contract has an option for if that -- if the
20 project is abandoned for a year and the company does
21 not remove the project, that the landowner has the
22 option of removing the project and then seeking
23 compensation from you?

24 A Yes.

25 MR. NOWICKI: I'm going to object to the

1 question, asking the witness about a document
2 without presenting the witness with the document.
3 It's appropriate for the witness to have the
4 document before he answers those types of questions.

5 EXAMINER NEWMARK: I agree. And, also, if
6 we're reviewing documents that are already in
7 evidence that speak for themselves, we really don't
8 need the witness to verify that. As well as facts
9 that are already presented in testimony.

10 MS. OVERLAND: Okay.

11 EXAMINER NEWMARK: You know, if there's an
12 issue whether there's something new or you want to
13 verify his understanding of something. But, for
14 example, the question of whether they have a
15 decommissioning plan or not in the record, I think
16 we're all familiar with the case at this point. So
17 just to save some time.

18 MS. OVERLAND: Okay. I'll try to keep it
19 short.

20 Q Okay. Now, let me offer number 16. Are you familiar
21 with Invenergy's Stoney Creek Wind Farm?

22 A No, I am not.

23 Q Are you familiar with the Number Three Wind Farm in
24 Lewis County in New York?

25 A I've heard that name, but that's all I know about

1 that project.

2 Q In your work preparing this application and regarding
3 the decommissioning section that you have, did you do
4 a -- what materials did you reference in putting that
5 together?

6 A Can you restate the question, please.

7 Q Sure. In putting together the section on
8 decommissioning in the application for 100, what
9 materials did you reference in putting that together?

10 A I think that part of the application was primarily
11 written by our consultant, Westwood. I think we were
12 able to find a couple other solar farms, third-party
13 solar farms that had decommissioning plans; and we
14 reviewed them as we created our own section of the
15 application.

16 Q Did you review any Invenergy decommissioning plans?

17 A We did. I reviewed some.

18 MS. OVERLAND: Your Honor, may I approach?

19 EXAMINER NEWMARK: Yes.

20 (Document(s) tendered to parties and the
21 witness.)

22 MS. OVERLAND: Your Honor, if something is
23 not accepted, should I not hand it out?

24 EXAMINER NEWMARK: We're talking about it
25 now. So if you have enough copies. Anything else

1 for this witness?

2 MS. OVERLAND: One more thing, yes.

3 EXAMINER NEWMARK: Why don't you pass it
4 all out, unless you want to surprise him with
5 something.

6 MS. OVERLAND: Well, what the heck. He's
7 seen this before.

8 EXAMINER NEWMARK: Right.

9 (Document(s) tendered to parties and the
10 witness.)

11 BY MS. OVERLAND:

12 Q Okay. Mr. Litchfield, I'm looking at the Number
13 Three Wind Farm. Do you know if that is an Invenenergy
14 project?

15 MR. NOWICKI: Your Honor, I'm going to
16 object. I think the witness already testified he
17 knows the name Three Wind Farm, but nothing else
18 about it. These documents, it's unclear whether
19 they are in fact what they purport to be. And the
20 same with the Stoney Creek document. I don't think
21 there's relevance to these or that -- the witness
22 has already stated his lack of foundation, and these
23 are the first times we're seeing these documents as
24 well. So I think this is in the nature of surprise
25 in this case.

1 EXAMINER NEWMARK: Your response?

2 MS. OVERLAND: Yes, Your Honor. These are
3 examples that if you simply go to Google and you
4 plug in Invenergy decommissioning or even
5 decommissioning plan, they pop up as examples of
6 decommissioning plans. And in this case, we have a
7 project that is proposed to have the decommissioning
8 plan done way off into the future where
9 decommissioning plans are regularly done. And one
10 of these is examples of what can be done. You know,
11 they show potential costs, they show bond for
12 decommissioning to happen. And this is before the
13 permit is issued. And that's an issue in this case.
14 And these are just examples of that, of what can be
15 done.

16 MR. NOWICKI: Your Honor, they may --
17 perhaps they're examples, but they're not evidence.
18 They haven't been introduced in the course of the
19 lengthy testimony and exhibit process. They relate
20 to apparently wind turbine issues as opposed to
21 solar. So I think we're getting far afield of what
22 the issue is with regard to the decommissioning plan
23 for this solar project.

24 MS. OVERLAND: Your Honor, Mr. Litchfield
25 testified that he has worked on wind decommissioning

1 and that this has been an issue previously, and it's
2 not news that decommissioning plans are done.

3 EXAMINER NEWMARK: Any other party have a
4 comment on this? Commission staff? No?

5 Yeah, I believe that this is inappropriate
6 to raise at this time. I think that this is
7 testimony or evidence that could have been
8 introduced by the intervenor to present an
9 alternative to having no plan available, to
10 suggesting what plans could be used, at least a
11 template for them. At this point, to bring it in
12 now is unfair and just -- it's out of time.

13 So I would suggest in the future to raise
14 this issue by presenting this in testimony so that
15 there would be a chance to verify documents and
16 respond to them. Perhaps that would have been
17 useful; but at this point, I think to try to bring
18 this in now would lead to more confusion than
19 benefit. So I won't accept these for the record.

20 MS. OVERLAND: Okay. May I ask that
21 people not throw these away.

22 Q Moving on. There was discussion yesterday about the
23 complaint process, and this is the one that I was
24 confused about earlier, where PSC staff was
25 discussing whether the complaint process for

1 utilities applies to merchant plants. Do you recall
2 that discussion?

3 MR. NOWICKI: Your Honor, I'm going to
4 object. The references back to whatever may have
5 been discussed in a different docket on a different
6 day seems unnecessary. The question can probably
7 just be asked directly about the subject matter
8 without trying to relate it back.

9 EXAMINER NEWMARK: I think that's fair.
10 Just ask him straight out.

11 BY MS. OVERLAND:

12 Q Mr. Litchfield, is there a complaint process in
13 this -- either the -- proposed to be used in this 100
14 docket or the 101 docket?

15 A I think we've described at length how we've addressed
16 complaints we've received thus far. And I have no
17 problem with such a program continuing.

18 Q Would you have any objection to enter -- having a
19 formal complaint process entered into the -- as a
20 condition of the permit?

21 MR. NOWICKI: Objection, vague.

22 EXAMINER NEWMARK: Can you reword that?

23 MS. OVERLAND: Sure.

24 Q Are you familiar with the Minnesota complaint
25 process?

1 A Yes, generally.

2 Q And I've handed out what's on the top, Attachment A,
3 Minnesota Public Utilities Commission complaint
4 handling procedures for permitted energy facilities.
5 Are you familiar with that?

6 A Yes.

7 MR. NOWICKI: Your Honor, I'm going to
8 object to this document. I see it does have
9 Mr. Litchfield's name on the -- on page 4. It looks
10 like I only have pages 2 and 4 of the document.

11 EXAMINER NEWMARK: I only have page 4.

12 MS. OVERLAND: 3 is missing.

13 MR. NOWICKI: But it's unclear what
14 proceeding this related to, timing, nature of the
15 proceeding, nature of the generation source. I
16 don't see a tie to what may be relevant to this
17 case. So I'd object on relevance and foundation.

18 EXAMINER NEWMARK: Okay. Yeah, I just --
19 I have pages 1 and -- yeah, I don't have page 2
20 and 3.

21 MS. OVERLAND: 3 is -- page 3 is missing.
22 I have another way of dealing with that. I will set
23 it aside.

24 EXAMINER NEWMARK: Okay. I mean, if you
25 want to ask him about the complaint process, let's

1 go ahead and --

2 MS. OVERLAND: Sure.

3 Q Are you familiar with the Minnesota complaint
4 process, specifically with the complaint process for
5 the Freeborn Wind project in Minnesota?

6 A Yes.

7 Q And is there a similar complaint process in Wisconsin
8 that you know of?

9 MR. NOWICKI: Objection, vague.

10 EXAMINER NEWMARK: You're talking about
11 wind farm complaint process? Can you just be a
12 little more specific.

13 BY MS. OVERLAND:

14 Q Is there a complaint process for merchant facilities
15 in Wisconsin?

16 MR. NOWICKI: Object, vague still.

17 EXAMINER NEWMARK: Okay. There's nothing
18 proposed in this docket in terms of complaints at
19 this point?

20 MR. NOWICKI: I would disagree with that.
21 I think there is a complaint process.

22 EXAMINER NEWMARK: Yes. So can we just
23 make reference to that; and if you have questions on
24 what's being proposed, then you can work off of that
25 as a start.

1 BY MS. OVERLAND:

2 Q Are you proposing a complaint process as a part of
3 this application?

4 A Yes. I was -- I think I have responded in rebuttal
5 to a suggestion by Mr. Rahn that relates to that
6 subject matter.

7 EXAMINER NEWMARK: So do you have a
8 question about that response? Do you want him to
9 explain something or elaborate, or do you want to
10 propose an alternative to that?

11 MS. OVERLAND: I think I'll leave it
12 because of what's in the record already.

13 EXAMINER NEWMARK: Okay.

14 BY MS. OVERLAND:

15 Q Okay. Number 23 in this.

16 EXAMINER NEWMARK: In what?

17 BY MS. OVERLAND:

18 Q In the JJW 23 that was handed out, the packet. And
19 so your comment here is that this is a wholesale
20 merchant plant and this is not a utility; is that
21 correct? Well, you commented that it's a wholesale
22 merchant plant, which means this is not regarded as a
23 utility for the purposes of Wisconsin law?

24 MR. NOWICKI: I'm going to object to the
25 extent it calls for legal conclusion.

1 EXAMINER NEWMARK: Well, yeah. I'm not
2 sure what your question is because we need to at
3 least provide something for the record to understand
4 what your question is.

5 BY MS. OVERLAND:

6 Q Okay. Well, the question is, as was in JJW 23, when
7 looking at Badger Hollow selling some or all of the
8 project to utilities, public utilities, will this
9 remain in part a wholesale merchant plant?

10 A The current plan for the project as stated in our
11 application is that half of it would be owned by
12 public utilities and half of it is unknown how it
13 would be owned. And the plan is for Invenergy to own
14 it and find another customer.

15 Q When you say find another customer, does that mean a
16 buyer for the plant or a buyer for the product?

17 A Either way.

18 Q Either way. Looking at -- is it correct you have 34,
19 35 and 39 JJW left?

20 A Yes.

21 Q And so as this number 34 states, you would agree that
22 there isn't a specific direct connection between this
23 project and a reduction of the use of fossil?

24 MR. NOWICKI: I'm going to object. It's
25 cumulative. The whole question was prefaced by as

1 it's stated here. The document speaks for itself.

2 MS. OVERLAND: Okay. I'll rephrase. The
3 document speaks for itself. Okay. Well, put it on
4 the pile. That's okay.

5 Q Regarding number 35 and discussing impacts, what
6 steps has Badger Hollow taken to prevent issues that
7 could require mitigation?

8 A We've taken a number of steps. I would highlight the
9 modification to a lease to give a landowner --
10 certain landowner more space; you know, involvement,
11 a lot of involvement, engagement with the local
12 governing officials with Iowa County and the towns to
13 develop a local operating contract that includes
14 conditions such as larger setbacks as required in the
15 Iowa County ordinance, potential visual buffers that
16 can be installed. I think those are some examples of
17 mitigation that we've undertaken.

18 Q The visual buffers, does that mean, for example,
19 planting trees around the fence line of the project?

20 A Potentially, yeah. Planting trees in certain areas
21 to obscure certain views as discussed with certain
22 landowners.

23 Q Would that be triggered by a complaint of a
24 landowner, or is that something that you would do
25 where impacts were anticipated?

1 A We have done that. So we've contacted every adjacent
2 residential landowner, offered a meeting to discuss
3 the project and offered mitigation such as this.
4 Three of them so far have taken us up on a neighbor
5 agreement and not requested visual buffers. The
6 offer is on the table to other landowners. It is on
7 the table now.

8 Q Are those landowners, if you consider the EA,
9 environmental assessment, and look at that Appendix A
10 attached with the charts with all the colors on it,
11 does that include those landowners that are in the
12 dark colored squares?

13 A I'd like to confirm what chart you're talking about.

14 EXAMINER NEWMARK: Is that an exhibit, a
15 Rahn exhibit I believe? Would that be the easiest
16 way to reference that?

17 MS. OVERLAND: I believe. It would be...

18 EXAMINER NEWMARK: Is that Rahn 1 in the
19 100 docket?

20 MS. OVERLAND: The final one is 357520. I
21 believe Appendix A is attached.

22 EXAMINER NEWMARK: Let's go off the
23 record.

24 (Discussion off the record.)

25 BY MS. OVERLAND:

1 Q Looking at that page --

2 EXAMINER NEWMARK: So let's identify where
3 we are. Final EIS -- I'm sorry, final EA.

4 MS. OVERLAND: EA, Appendix A.

5 EXAMINER NEWMARK: Appendix A. Is there a
6 page here?

7 MS. OVERLAND: Page 1 of Appendix A. I
8 don't think they're numbered.

9 EXAMINER NEWMARK: Doesn't look like it.
10 All right. We'll leave it at that. Go ahead.

11 BY MS. OVERLAND:

12 Q Okay. Looking at that chart, which isn't identified
13 well, but it's page 1 of Appendix A of the
14 environmental assessment, are these the homes that
15 you were referring to when you were talking about
16 mitigation?

17 A I believe there is some overlap. This is an analysis
18 prepared by the Commission staff. We did our own
19 assessment of who we thought would be most interested
20 in hearing about mitigation from the project, and
21 that was a list of landowners immediately adjacent to
22 our solar arrays. I think a majority of them are on
23 this list, but it's a slightly different analysis.

24 Q And that list, is that list in the record?

25 A There's maps that show the arrays, and it's available

1 to determine where the houses are. I don't recall if
2 we've put the -- we've described the mailing list --
3 or the letter, we invited these neighbors to a
4 meeting in June of 2018. I think the letter is in
5 the record. I don't recall if the mailing list is in
6 the record.

7 Q And that mailing list, those then -- that mailing
8 list would be the list of the people you went and
9 asked if they would like to talk about mitigation?

10 A Yes.

11 Q What about -- there's a number of steps to addressing
12 issues. Have you dealt with avoidance? Like, what
13 have you done to avoid impacts?

14 A I would again offer the example of amending our lease
15 to move panels away from the Kite family. I think
16 that's an example of avoidance as I understand it.

17 Q Are there other examples of avoidance?

18 A Well, our leasing effort began with offers to
19 everybody in the project area. So if you consider
20 direct involvement in the project avoidance, I think
21 that's another example.

22 Q Okay. And then looking at JJW 35, where the question
23 was -- your testimony on page 31 and 32 of your
24 direct is that the project will not have any undue
25 adverse impact on environmental values. What do you

1 regard as undue?

2 A I'd like to read that portion of my testimony,
3 please. What line was it?

4 Q Couldn't tell you. Just a minute. You will probably
5 find it before I will. I guess it starts at the
6 bottom of 31. Yes. 24 on page 31 going to the top
7 of page 32.

8 MR. NOWICKI: Your Honor, I'd say the data
9 request provides the response about the meaning of
10 undue adverse impact. So if we kind of anchor the
11 question there, if there's further development. But
12 the question as posed is asked and answered in the
13 document.

14 EXAMINER NEWMARK: Okay. I agree. Do you
15 have anything else to say, anything else to ask him
16 besides what he's already answered in the data
17 request?

18 MS. OVERLAND: Okay. Well, I don't see a
19 definition of undue there. But --

20 EXAMINER NEWMARK: Well, it says Badger
21 Hollow believes the meaning of the phrase "undue
22 adverse impact," and then he explains what --

23 MS. OVERLAND: Right, is self-evident.
24 And -- well, I can leave it at that and that speaks
25 for itself. I don't believe the question is

1 answered.

2 EXAMINER NEWMARK: Well, I mean -- okay.

3 MS. OVERLAND: Okay. But we can leave it
4 at that.

5 EXAMINER NEWMARK: I won't force you.

6 MS. OVERLAND: I can leave it at that.

7 Q If you look at JJW 39, and this is again about noise
8 complaints, where the bottom line of this is, "At
9 this time, the noise complaint process is not
10 incorporated into any permit." Granted no permit has
11 been issued. But would that also mean it has not
12 been incorporated into any permit request?

13 A Again, I think that the -- my rebuttal testimony
14 addressing Mr. Rahn's suggestion speaks to this, that
15 we don't have an objection to addressing complaints
16 about noise or really anything else about the
17 project.

18 Q And then that would require an affirmative complaint
19 as opposed to prevention, correct?

20 MR. NOWICKI: I'm going to object to form.
21 We're talking about a complaint process. So the
22 premise is it's a way to address complaints. I
23 think prevention is a different subject matter. The
24 two are getting confused.

25 EXAMINER NEWMARK: Okay. Yeah. If you

1 want to talk about a protocol or a standard.

2 BY MS. OVERLAND:

3 Q Would you agree that the Appendix A of the EA shows
4 the potential for problems where you may receive
5 complaints?

6 A No. I would say that Appendix A mathematically
7 quantifies how many acres within a certain radius of
8 each house are planned for development of solar. And
9 I would also say that I don't anticipate complaints
10 to come from solar because it's quiet, it doesn't
11 have odor and it's low visual profile; and any
12 concern about a visual -- a view of solar can be
13 mitigated by blocking it with trees and bushes.

14 Q And the trigger for that mitigation then would be a
15 complaint?

16 EXAMINER NEWMARK: That's asked and
17 answered. I'm not going to -- all right.

18 MS. OVERLAND: Okay. Put 39 away.

19 EXAMINER NEWMARK: So before you move on
20 to another topic, I was just curious, you did
21 mention that the applicant did send out a letter
22 inviting the adjacent landowners to enter into a
23 conversation about mitigation; and you said the
24 mailing list would show the people that were
25 involved with that process?

1 THE WITNESS: That would show who we sent
2 it to.

3 EXAMINER NEWMARK: Can we get that for the
4 record? Because I don't believe -- you said we
5 might have the letter. But I think having the list
6 of names might be helpful in order to follow up in
7 case we do receive complaints or contacts.

8 MR. NOWICKI: I think we provided a number
9 of different lists in response to different
10 questions. I will see if one of the ones we've
11 already provided is that list and then clarify it.

12 EXAMINER NEWMARK: Okay. Great. Great.
13 So if not, let's just I guess --

14 MS. OVERLAND: I believe there was an
15 Appendix J that was a list, a mailing list.

16 EXAMINER NEWMARK: We'll have the
17 applicant take a look. I'll just reserve
18 Exhibit 22, Litchfield 22, just in case we need to
19 put that in.

20 (Exhibit Litchfield No. 22 designated
21 for delayed receipt.)

22 BY MS. OVERLAND:

23 Q And then to clarify, that would be the mailing list
24 that was sent out asking people if they would like to
25 enter into discussions?

1 EXAMINER NEWMARK: That's what I said,
2 yeah.

3 MS. OVERLAND: I just wanted to clarify.

4 EXAMINER NEWMARK: Okay. Any other
5 questions?

6 MS. OVERLAND: A couple more. Almost
7 done.

8 Q Are you familiar with the notion of avian protection
9 plans?

10 A Yeah. I -- yes.

11 Q And is there one in this project that's in the
12 application or the appendices?

13 A No. We did not create an avian/bat protection plan
14 because there's no expected impacts to avian/bat
15 populations.

16 Q Okay. I'll leave that there.

17 MS. OVERLAND: Okay. I have no further
18 questions.

19 EXAMINER NEWMARK: All right. Moving
20 along. So I think the next on the list would be the
21 Kites.

22 MS. THOMPSON: I have a couple follow-up
23 questions.

24 EXAMINER NEWMARK: Yes. Go ahead.

25 CROSS-EXAMINATION

1 BY MS. THOMPSON:

2 Q Mr. Litchfield, you referenced changes to the project
3 layout near the Kites' residence in your letter dated
4 October 11th to date. Since the application was
5 filed on May 31st, is that the only change to the
6 project layout that has been made?

7 A No. We made --

8 Q Thank you. That's all. I just was curious about
9 that.

10 Was that change that you did to the Kites'
11 property filed with the PSC on October 11th, the date
12 of your letter?

13 A No. I think it was a little later.

14 Q Actually, it was filed on November 6th with the PSC
15 pursuant to a data request. When you filed that data
16 request, did you provide notice to the Kites that you
17 in fact changed the layout boundaries to their
18 property or near their property?

19 A Are you asking when we filed the response to the data
20 request?

21 Q When you filed the data request, did you at any time
22 notify the Kites that the project layout had been
23 modified?

24 MR. NOWICKI: I'm going to object to form.
25 The letter is already in the record which identifies

1 the change.

2 MS. THOMPSON: Okay. I can rephrase that.

3 Q Mr. Litchfield, when you filed the change to the
4 project layout, did you file it in response to a
5 Commission data request on November 6th?

6 A Yes.

7 Q Okay. And when you filed that with the Commission,
8 had the date for the notice of proceeding expired in
9 which to intervene in this case?

10 MR. NOWICKI: I'm going to object. That
11 can be determined just by looking at documents
12 without --

13 BY MS. THOMPSON:

14 Q Mr. Litchfield, would you agree that when you filed
15 the project layout data request --

16 (Interruption by the reporter.)

17 Q I will just point to the fact that the notice period
18 expired on October 17th. Would you agree that you
19 filed your project layout map after the expiration of
20 the notice of proceeding expiration date?

21 A Yes.

22 Q Thank you. One more question. As it relates to the
23 local operating agreement, you referenced it earlier,
24 and I believe that you have a copy of it. And would
25 you agree that Section 22 that you are referencing

1 allows project owners the right to install solar
2 arrays within 50 feet from the project boundary lines
3 of nonparticipating landowners?

4 MR. NOWICKI: I'm going to object. The
5 document speaks for itself. It says what it says.

6 EXAMINER NEWMARK: Okay.

7 BY MS. THOMPSON:

8 Q Mr. Litchfield, did you negotiate the setbacks with
9 Iowa County and the nearby towns affected by the
10 project? Were you involved in negotiations with
11 them?

12 A Yes.

13 Q Did you negotiate Section 22 in the local operating
14 agreement?

15 A Yes.

16 MS. THOMPSON: Thank you. I'm done. I
17 have no further questions.

18 EXAMINER NEWMARK: All right. Thanks. So
19 any other parties wish to ask questions? No?
20 Commission staff?

21 MR. RUSZKIEWICZ: Commission staff has
22 just one clarification.

23 CROSS-EXAMINATION

24 BY MR. RUSZKIEWICZ:

25 Q Earlier you spoke in regards to stray voltage testing

1 within one half mile of the 101 docket line and the
2 applicant's agreement to be able -- to testing within
3 that area. That's what we talked about earlier,
4 right?

5 Just to clarify, is the applicant okay
6 with stray voltage -- agree to stray voltage testing
7 within one half mile of all the facilities in the
8 Docket 101 and the 100 docket?

9 A No. Our commitment was to the 138 kV infrastructure.
10 So there's the project substation in the 100, but
11 it's effective at the same location as the 101
12 facility.

13 Q The agreement, what was talked about and already
14 addressed in the record, was just referring to the
15 tie line?

16 A Yes.

17 MR. RUSZKIEWICZ: Okay. Thank you.

18 EXAMINER NEWMARK: Any redirect?

19 MR. NOWICKI: No redirect.

20 EXAMINER NEWMARK: Thank you, sir. You're
21 excused.

22 (Witness excused at this time.)

23 EXAMINER NEWMARK: Okay. Second witness.

24 MR. NOWICKI: The applicant will call
25 Michael Hankard.

1 MICHAEL HANKARD, APPLICANT WITNESS, DULY SWORN

2 DIRECT EXAMINATION

3 BY MR. NOWICKI:

4 Q Mr. Hankard, would you please state your name.

5 A Michael Hankard.

6 Q How are you employed?

7 A I own my own firm, Hankard Environmental, Inc.

8 Q In this -- in these matters, did you prepare and
9 cause to be filed for the 100 proceeding direct and
10 rebuttal testimony including one exhibit?

11 A I did, but I believe there are two exhibits. My C.V.
12 and the noise report.

13 Q Okay. And just for clarification, the noise report
14 is part of the application, so that was not
15 separately filed as an exhibit. But your -- it's so
16 noted.

17 So in the 101 docket, did you cause to be
18 filed testimony in this case without any exhibits?

19 A Yes. Rebuttal testimony in the 101.

20 Q Okay. And if I asked you the questions set forth in
21 your testimony today, would your answers be the same
22 as set forth in that testimony?

23 A Yes.

24 Q And are the exhibits true and correct copies of the
25 exhibits that you described in your testimony?

1 A Yes.

2 MR. NOWICKI: Okay. I have no further
3 oral surrebuttal questions for this witness, so he
4 is available for cross-examination.

5 EXAMINER NEWMARK: Okay. Questions? I've
6 got to get my list. CUB, any questions?

7 MS. HANSON: No questions.

8 EXAMINER NEWMARK: And, Ms. Overland, any
9 questions?

10 MS. OVERLAND: Oh, yes.

11 EXAMINER NEWMARK: Okay.

12 MS. OVERLAND: And another...

13 EXAMINER NEWMARK: Yeah. Let's get them
14 all out for this witness.

15 (Documents tendered to parties and the
16 witness.)

17 EXAMINER NEWMARK: So your questions are
18 going to pertain to the 100 docket primarily?

19 MS. OVERLAND: Yes.

20 EXAMINER NEWMARK: Okay. So we'll --

21 MS. OVERLAND: Only the 100 docket.

22 EXAMINER NEWMARK: Only. That's exactly
23 what I wanted to hear. So we'll mark that Hankard 2
24 in the 100 docket.

25 (Exhibit Hankard No. 2 (100 docket) was marked.)

1 MS. OVERLAND: Oh, these -- Your Honor,
2 those earlier ones, I don't know that I actually
3 offered and you accepted.

4 EXAMINER NEWMARK: We did not. All right.
5 Yes. You're right. So we did have Litchfield 20;
6 and I think that contained the data request
7 responses for JJW 27, JJW 9, JJW 23, JJW 16.

8 MS. OVERLAND: 34.

9 EXAMINER NEWMARK: 34, 35, 39. Any
10 objections to that going in the record?

11 MR. NOWICKI: No objections.

12 EXAMINER NEWMARK: All right. So that's
13 done.

14 (Exhibit Litchfield No. 20 received.)

15 EXAMINER NEWMARK: So then we have
16 Hankard 2, so we're just marking that for now. Go
17 ahead.

18 MS. OVERLAND: And Hankard 2 consists of
19 JJW 57, 55, and the attached report that was
20 submitted in response to JJW 54.

21 EXAMINER NEWMARK: Okay.

22 MS. OVERLAND: The Harden Solar Energy
23 Center.

24 EXAMINER NEWMARK: Yes. Okay.

25 MS. OVERLAND: And Hankard 61 -- I mean

1 JJW 61, 62, and 66, 67 and 68.

2 EXAMINER NEWMARK: Right. Excellent.

3 Proceed.

4 MS. OVERLAND: And I'd offer these as
5 well.

6 EXAMINER NEWMARK: Right. We've marked
7 them for now. When we get through the questions,
8 then we'll see -- well, first you want to identify
9 them and get the foundation in.

10 CROSS-EXAMINATION

11 BY MS. OVERLAND:

12 Q First, are you familiar with these data request
13 responses?

14 A Yes, I am.

15 Q And you provided these answers?

16 A Yes.

17 Q Okay. Looking at number 57 where you assumed a
18 ground factor of 0.5, and you've testified that a
19 ground factor of 0.0 represents frozen ground, highly
20 reflective surfaces. How is a 0.5 ground factor an
21 appropriate assumption where we live in a cold
22 climate where it is often -- the ground is frozen,
23 and adding in that the reflective character of the
24 solar panels?

25 A Well, just frozen ground, it is not in and of itself

1 represented by zero ground -- it would be a, you
2 know, a very flat, smooth, frozen surface would be
3 representative of zero ground. But a farm field
4 that's left in the condition that they are over the
5 winter, if that ground freezes, that doesn't
6 necessarily mean that's representative of -- by zero
7 ground because there are all kinds of undulations in
8 the ground and small bits of crops and potentially
9 snow.

10 Q When you use the ground factor, is it either 0.0 or
11 0.5, or is there other gradations that are used in
12 modeling?

13 A The model that we use is called the ISO 9613 part 2
14 method. It allows a ground factor anywhere between
15 zero and one, zero being reflective, one being
16 absorptive. You can choose anything within that
17 range.

18 Q So a 0.2 or 0.3 could have been utilized?

19 A You can, yes.

20 Q Okay. Moving to the 55, could you take a look at the
21 study that is attached to it. Do you recognize that
22 study, the pre-construction noise analysis for Harden
23 Solar Energy Center?

24 A I do recognize that, yes.

25 Q Okay. In taking a look at the very last page, which

1 is page B-2, Table B-1, it is in Appendix B, what is
2 the top line of that table? Granted it speaks for
3 itself, I do agree that it says property line worst
4 case 66 dBA.

5 A Yes.

6 Q Is there a similar table in the noise and --
7 pre-construction noise analysis that you performed
8 for the Badger Hollow project?

9 A Yes. There's a similar table of predicted
10 operational noise levels in the report for Badger
11 Hollow.

12 Q And does it list the property line worst case?

13 MR. NOWICKI: I'm going to object. The
14 document speaks for itself.

15 EXAMINER NEWMARK: Yeah. Let's go off the
16 record for a minute and we can bring it up.

17 (Discussion off the record.)

18 EXAMINER NEWMARK: Let's go ahead on the
19 record.

20 BY MS. OVERLAND:

21 Q In the Harden study, it was labeled as Appendix B,
22 predicted operational noise levels. Would you agree
23 that in the Badger Hollow Appendix P pre-construction
24 noise analysis, Appendix C is predicted operational
25 noise levels?

1 A Yes.

2 Q And in that, do you have any indication of property
3 line worst case in this Appendix C?

4 A No. Appendix C just -- in the Badger Hollow report
5 lists predicted noise levels at residences, at the
6 houses.

7 Q Do you have anywhere in this noise analysis the
8 property line worst case?

9 A The noise contours in figure 72 show where noise
10 levels will be predicted at certain locations other
11 than a residence, although I don't believe property
12 lines are shown there, so one cannot discern that.
13 So therefore, no.

14 Q Okay. Thank you. No further questions about this,
15 that exhibit. Moving on.

16 Regarding JJW 61, which is about
17 cumulative impacts and the wind facility and the
18 project Badger Hollow. Can you explain why the
19 existing wind project nearby is not regarded as
20 cumulative -- it's not regarded as existing
21 generation?

22 A The two projects -- I believe I've answered some of
23 this in testimony. But the two projects are in no
24 way linked. They are not the same project proponent,
25 they are not the same project footprint. When we did

1 our ambient noise survey, we heard one -- barely
2 heard one wind turbine at one of our locations, so we
3 don't really expect the noise to be cumulative. And,
4 you know, lastly solar projects operate during the
5 day, don't produce any measurable noise at night.
6 And wind turbines are generally considered a
7 nighttime noise issue. So for all of those reasons I
8 don't consider these projects related on a noise
9 basis.

10 Q But you did say you did hear one of the wind
11 turbines. In your professional opinion, what level
12 would it be -- first, did you measure the noise level
13 that you did hear of the wind turbines?

14 MR. NOWICKI: Object to form. It's
15 multiple questions.

16 EXAMINER NEWMARK: Okay. Just ask the
17 one.

18 MS. OVERLAND: I'm trying to narrow it
19 down to one.

20 EXAMINER NEWMARK: I get it.

21 BY MS. OVERLAND:

22 Q Did you measure the noise level that you heard?

23 A Well, yeah. I mean, we were at the locations
24 measuring noise, so that's what we were doing. But
25 you can't -- you know, when you barely hear something

1 in the background above everything else that's going
2 on, you really can't tell what the level of the --
3 that the wind turbine is producing itself. All you
4 know is what you're measuring in total. And our
5 notes, our field notes from that measurement location
6 say that the wind turbine was barely audible, which
7 means it was similar to or less than the ambient
8 level.

9 Q And the ambient level at that point, do you recall?

10 A I do not recall offhand. If the turbines were
11 operating, it would have been a windy day; and as I
12 have described in my report, therefore the noise
13 levels would have been somewhere in the 40 to 50 dBA
14 range depending on the strength of the wind.

15 Q Okay. Good enough. Okay. Let's set that 61 aside.
16 And in 62, you were -- in the noise analysis, you did
17 make a distinction between nonparticipating and
18 participating landowners. And you did note at the
19 end that the land lease agreements provide a waiver
20 for noise. Do you know why that is?

21 A I guess I don't. I did not prepare the lease
22 agreements, so I'm...

23 Q But you did note the distinction in your report
24 between nonparticipating and participating. Did that
25 weigh your analysis of the noise in any way?

1 A You know, we predicted noise levels at every
2 residence. So we didn't just predict at
3 nonparticipating, for example. We included every
4 residence in the area. And we simply noted them,
5 whether or not they were project participants or not.

6 Q And that is noted in the report, correct?

7 A Yes. That's explained in the report.

8 Q Okay. That's it for 62. Regarding JJW 66, in your
9 analysis, Table 5-2 page 20, transformer noise
10 averaging 98 dBA. So do you have -- you note that
11 the distance between them was 250, 650 and 1,500 feet
12 between the transformer and the nearest residences.

13 In your answer, you said that the closest
14 one, the 250-foot one, will be purchased by the
15 project and likely removed. And then the next
16 sentence, the other two are both participating. So
17 does that mean that then the 675 and the 1,500 feet
18 residences, they are participating landowners? Make
19 sure that's correct.

20 MR. NOWICKI: I'm going to object. That's
21 exactly what the answer already says.

22 EXAMINER NEWMARK: Okay.

23 BY MS. OVERLAND:

24 Q And what are the noise levels at their homes from the
25 transformer?

1 A The report would not tell you what the level is of
2 just the transformer because it's all of the project
3 sources. So we'd have to identify which house
4 numbers they are and look up those levels in the
5 report. They're all in there.

6 Q So then the transformer noise would be incorporated
7 for those residences or nearby residences to the
8 transformer into the global noise, the large -- all
9 the noise?

10 A Yeah. The levels reported in the report are the sum
11 of all project sources, transformers, inverters and
12 tracking motors.

13 Q Okay. And on number 67, apparently the question was
14 inartful on my part. It's regarding whether 3 dBA is
15 a doubling of sound pressure. So the correct
16 response, I just want to clarify that it's 3 dBA is a
17 doubling of sound pressure and not sound pressure
18 levels?

19 MR. NOWICKI: Object, that's exactly what
20 the document says.

21 BY MS. OVERLAND:

22 Q Right. Well, I wanted to go on to what's the
23 difference between sound pressure and sound pressure
24 level?

25 EXAMINER NEWMARK: How quickly can you

1 answer this?

2 THE WITNESS: I'm happy to explain, but I
3 think I heard an objection and I just -- I want
4 direction.

5 EXAMINER NEWMARK: I think that was on the
6 prior question.

7 MS. OVERLAND: Right. And so I moved on.

8 A So, please, I'm sorry. Restate the question.

9 Q Sure. What's the difference between sound pressure
10 and sound pressure levels? I'm thinking of SPL
11 meters which I think means sound pressure level. So
12 why is sound pressure appropriate and not sound
13 pressure level?

14 A Yeah. Okay. Sound pressure, our ears hear --
15 respond to changes in pressure. And those are
16 measured in units of pascals or some other, pounds
17 per square inch, whatever pressure measurement you
18 want to use. And then we compress that scale using
19 the decibel math.

20 So -- and when you're talking about
21 decibels, you want to refer to a level; and when
22 you're talking about sound pressure, that's what our
23 ears actually respond to. It's somewhat semantics.

24 Q Okay. And then number 68, that's also about
25 nonparticipating versus participating. So we won't

1 need to go into that again. Let's see. And that's
2 all I have for Mr. Hankard.

3 EXAMINER NEWMARK: Okay. So I just had a
4 quick question before we move on.

5 EXAMINATION

6 BY EXAMINER NEWMARK:

7 Q I'm just curious about the worst case property line
8 dBA. Now, I think we confirmed that that's in the
9 Harden Solar Energy Center analysis; but it's not in
10 any analysis provided for this project. Am I correct
11 to say that?

12 A That is correct.

13 Q So why wasn't a property line worst case developed
14 for this project?

15 A Well, in the case of the Harden project which is
16 located in the State of Ohio, that was a requirement
17 under those regulations that we provide the property
18 line analysis. So -- and it was not to my knowledge
19 a requirement under the Wisconsin guidelines.

20 Q Okay. Were you directed not to do a property worst
21 case analysis?

22 A Not explicitly directed not to, no. Just using my
23 professional experience, I respond to the regulations
24 that are in front of me.

25 Q Okay. Understood. Thanks.

1 EXAMINER NEWMARK: Who's next, Kite? Do
2 you have questions?

3 MS. THOMPSON: I do not have any
4 questions.

5 EXAMINER NEWMARK: No? Okay. And now,
6 any other parties I should ask first, questions for
7 Mr. Hankard? No? Commission staff?

8 MR. RUSZKIEWICZ: No.

9 EXAMINER NEWMARK: All right. Thanks.
10 You're excused.

11 MR. NOWICKI: Your Honor, I have redirect.

12 EXAMINER NEWMARK: I'm sorry. Just trying
13 to move things along. Sorry. Well, thanks for
14 interjecting there. You're not excused. You still
15 have your attorney to deal with.

16 REDIRECT EXAMINATION

17 BY MR. NOWICKI:

18 Q Mr. Hankard, you were asked some questions about
19 sound emanating from transformers, motors and
20 inverters. Do you recall that line of questioning?

21 A Yes.

22 Q Is it appropriate to consider the sound emanating
23 from all of those facilities or pieces of equipment
24 in doing a noise assessment?

25 A Yes. And the noise is -- the noise analysis should

1 be reflective of all sources in the project. So I
2 think you -- yes, it's appropriate.

3 Q Okay. And then you made a reference in relation to
4 the property line issue about you follow the
5 regulations that are before you. Do you recall that
6 testimony?

7 A Yes.

8 Q And so for this Badger Hollow project, you followed
9 whatever was available under Wisconsin law; is that
10 true?

11 A Yes. It's called the noise protocol. It's
12 referenced in the noise report.

13 Q And the noise protocol doesn't have a property line
14 specific analysis requirement; is that true?

15 A If you give me a minute to review it, I'd like to
16 before I respond.

17 Q Sure.

18 A I do not see any requirement in the protocol under
19 sound level estimates for estimating at property
20 lines. It says provide a contour map, which we did.
21 I see nothing about property lines.

22 Q One more question for you. Do you recall being asked
23 questions about the application of a ground factor
24 and the I guess theoretical idea that a ground factor
25 of .2 or .3 can be applied in certain circumstances?

1 A I do recall that.

2 Q Do you believe that it would have been appropriate to
3 apply a ground factor of 0.2 or 0.3 to your analysis
4 of the Badger Hollow project?

5 A No.

6 Q Why not?

7 A The model that we use has been shown to predict
8 conservatively with 0.5. I mean, 0.5 ground factor
9 is used in probably -- well, with the exception
10 perhaps of wind turbine projects which are different
11 because the source is elevated. But for projects
12 like a typical power plant, a solar plant where the
13 sources are relatively close to the ground, I would
14 say 90 to 99 percent of the studies use 0.5. And
15 when consultants like myself go out and measure these
16 plants after they're constructed to verify our
17 modeling assumptions, that assumption checks out as
18 being, if anything, overpredicting the levels. So
19 there's no need to -- there would be no justification
20 to use something like a .2 or .3 which would predict
21 yet higher levels because we're already demonstrating
22 that the model is probably overpredicting. So that
23 would not be justified for those reasons.

24 MR. NOWICKI: Thank you. No further
25 questions.

1 EXAMINER NEWMARK: Great.

2 MS. OVERLAND: I have a quick follow-up.

3 EXAMINER NEWMARK: All right. Very
4 quickly, please.

5 MS. OVERLAND: I promise very quickly.

6 RECROSS-EXAMINATION

7 BY MR. OVERLAND:

8 Q You were just referencing something, and could you
9 cite what that is that you were reading in your
10 response.

11 A Yeah. It's in Appendix A of the noise report. It's
12 Wisconsin Noise and Vibration Protocol, November
13 2008.

14 MS. OVERLAND: Okay. Thank you.

15 EXAMINER NEWMARK: All right. Is that it?
16 Can we let him go? Thanks very much.

17 THE WITNESS: This time.

18 EXAMINER NEWMARK: Yeah. This time's a
19 charm.

20 THE WITNESS: Thank you.

21 (Witness excused at this time.)

22 EXAMINER NEWMARK: All right. Can we
23 accept Hankard 2 for the record? Any objections?

24 MR. NOWICKI: Your Honor, I would object
25 to the attachment to JJW 55 which is the Harden

1 report. I think through the brief questioning of
2 this witness, there's been no connection made
3 between that noise report and what would have been
4 appropriate for the Wisconsin noise report for the
5 Badger Hollow noise report. I think it's
6 irrelevant.

7 MS. OVERLAND: Your Honor, I think it is
8 very relevant because it shows what can be done.
9 There's no prohibition of doing a property line
10 measurement; and that shows, especially here where
11 the setbacks are so close to the property lines,
12 that perhaps that should have been done. And he did
13 do the report.

14 MR. NOWICKI: Under the law of --
15 applicable in Ohio and Wisconsin, it's two different
16 requirements and standards. It's not -- I think it
17 would confuse the record to introduce a document
18 that was prepared in accordance with another state's
19 standards.

20 EXAMINER NEWMARK: Yeah. I would agree
21 that we will withhold JJW 55 from the record simply
22 because the study offered in this case -- I'm
23 looking at the appendices that are wrong. The
24 pre-construction noise analysis offered in this case
25 has not been challenged for its validity. And if --

1 I think we've established that Mr. Hankard followed
2 the standards applicable to Wisconsin law at least
3 in terms of the different standards that might apply
4 in Ohio. And so in this case, the -- you know,
5 there's no question as to whether the study was
6 conducted appropriately or to the conclusion in the
7 study. So to have the Ohio study in the record as a
8 point of comparison just is not probative and will
9 just confuse the record. So we'll leave that one
10 out.

11 Anything else? Okay. So we'll take
12 Hankard 2 minus the JJW 55.

13 (Exhibit Hankard No. 2 received.)

14 EXAMINER NEWMARK: All right. So who do
15 we have next?

16 MR. NOWICKI: The applicant would call
17 Professor David Loomis.

18 EXAMINER NEWMARK: Okay. Off the record
19 just for a second.

20 (Discussion off the record.)
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1 DAVID LOOMIS, APPLICANT WITNESS, DULY SWORN

2 DIRECT EXAMINATION

3 BY MR. NOWICKI:

4 Q Professor Loomis, please state your name.

5 A David Loomis.

6 Q How are you employed?

7 A I am a professor of economics at Illinois State
8 University, and I'm also president of Strategic
9 Economic Research, LLC.

10 Q Okay. Have you prepared and caused to be filed in
11 this proceeding certain testimonies?

12 A Yes.

13 Q In the 100 docket, have you prepared and caused to be
14 filed direct, rebuttal and surrebuttal testimony
15 including two exhibits with your direct testimony and
16 four with your rebuttal testimony?

17 A Yes.

18 Q And in the 101 docket, have you prepared and caused
19 to be filed direct and rebuttal testimony including
20 two exhibits with your direct testimony and four
21 exhibits with your rebuttal testimony?

22 A Yes.

23 Q If I asked you the same questions set forth in your
24 written testimony today, would your answers be the
25 same as set forth in that written testimony?

1 A Yes.

2 Q And are the exhibits that are -- accompany your
3 written testimony complete and accurate?

4 A Yes.

5 MR. NOWICKI: Your Honor, I have no oral
6 surrebuttal for this witness, so Professor Loomis is
7 available for cross-examination.

8 EXAMINER NEWMARK: All right. So Citizens
9 Utility Board?

10 MS. HANSON: No questions.

11 EXAMINER NEWMARK: Jewell Jenkins
12 Intervenors?

13 MS. OVERLAND: Yes.

14 EXAMINER NEWMARK: Okay. Any documents?

15 MS. OVERLAND: No.

16 EXAMINER NEWMARK: Okay. Go ahead.

17 CROSS-EXAMINATION

18 BY MS. OVERLAND:

19 Q Good afternoon now, Mr. Loomis. In your review and
20 your study for this case, how did you address the
21 impact of this project on ag. support services, such
22 as the equipment, repair and sales, people who do
23 planting, harvesting, area spraying; how did you
24 address the impact on those entities?

25 A So in looking at the economic impact modeling, it

1 takes into account the local interconnections within
2 the local economies of the different sectors, and
3 then looks at those results both in terms of jobs,
4 earnings and output.

5 Q I didn't see that reflected in there, but... Would
6 you agree that there could be a loss of population,
7 of people who move away if their farm is covered with
8 solar panels?

9 MR. NOWICKI: Object to form. The
10 reference is to people and their farms. I think
11 it's too vague to answer.

12 EXAMINER NEWMARK: Okay. Can you
13 rephrase?

14 BY MS. OVERLAND:

15 Q Regarding the people who have leased land for this
16 project, there was a reference in the record, in
17 someone's testimony, that people could move away.
18 Did you consider that and the impact of people moving
19 away that would have on the community?

20 A I'm not so sure I understand that question.

21 Q I'll try again. In your study, did you address the
22 impact of if people move away from the area because
23 they're no longer farming?

24 A Those effects, if they were to exist, would be in my
25 opinion minimal given the large impact that this

1 project would make in terms of the jobs, earnings and
2 output proven in the study.

3 EXAMINER NEWMARK: But was the question in
4 the study did he look at that?

5 MS. OVERLAND: In the study did he look at
6 that, right.

7 A I think looking at those jobs impacts, you would see
8 an increase or reversal of decline in population
9 rather than a further decrease due to the project.

10 Q Why would that be?

11 A Because if there's new employment to be had, that
12 will attract people into the local area rather than
13 cause them to move away.

14 Q How many people will be employed by the solar
15 project? Isn't it just a handful?

16 MR. NOWICKI: I'll object. I think his
17 report clearly identifies the number of employees.
18 If that's the only question, then the answer is
19 already in the report and in the record.

20 EXAMINER NEWMARK: So you can find your
21 answer in the report. But if you want to move from
22 that point, you can get the report and we can work
23 off of it.

24 MS. OVERLAND: Okay. No, we don't need to
25 look it up. I'll find that.

1 Q In your direct, it ends -- could you turn to page 8
2 of your direct.

3 A Yes.

4 Q You're asked whether the farmers who would lease
5 their agriculture land will be better off
6 economically, and you state that yes, those farmers
7 will be better off economically. What about everyone
8 else in the community? Where did you address that?

9 A So that question was particularly looking at those
10 farmers that are -- are going to be leasing their
11 land. The impacts, particularly the economic impacts
12 in the community, were measured by the modeling that
13 I did.

14 Q I will leave that where it is.

15 MS. OVERLAND: Okay. I have no further
16 questions.

17 EXAMINER NEWMARK: Okay. The Kites, any
18 questions?

19 MS. THOMPSON: I have no further
20 questions.

21 EXAMINER NEWMARK: Any other parties,
22 questions? Commission staff? Redirect.

23 MR. NOWICKI: Just briefly.

24 REDIRECT EXAMINATION

25 BY MR. NOWICKI:

1 Q Professor Loomis, you just referenced economic
2 impacts apart from the participating landowners being
3 reflected in the modeling you did. Just to make sure
4 we know what part of your report you're referring to,
5 what kind of impacts to the rest of the community are
6 you referring to?

7 A So in my report there's two different sections. One
8 is the economic impact analysis and one is the land
9 use. The land use section is particularly looking at
10 those landowners that would lease their land and what
11 that would look at for that particular group. The
12 economic impact analysis is much broader, looking at
13 the county and the state results.

14 MR. NOWICKI: No further questions.

15 EXAMINER NEWMARK: All right. Thanks.

16 You're excused.

17 (Witness excused at this time.)

18 EXAMINER NEWMARK: Who's next?

19 MR. NOWICKI: The applicant calls David
20 [sic] MaRous to the stand.

21 MS. THOMPSON: Judge Newmark, do --

22 EXAMINER NEWMARK: Off the record. Is
23 this off the record?

24 MS. THOMPSON: Yes, this is off the
25 record.

1 MR. NOWICKI: I'm sorry. Michael MaRous.

2 (Discussion off the record.)

3 (Teleconference established with Kurt

4 Kielisch.)

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1 MICHAEL S. MAROUS, APPLICANT WITNESS, DULY SWORN

2 DIRECT EXAMINATION

3 BY MR. NOWICKI:

4 Q Please state your name.

5 A Michael S. MaRous.

6 Q How are you employed?

7 A I am president of MaRous & Company which is a real
8 estate appraisal and consulting firm.

9 Q Have you prepared and caused to be filed in this
10 proceeding certain testimonies and exhibits?

11 A I have.

12 Q In the 100 docket, did you prepare and cause to be
13 filed direct and rebuttal testimony including one
14 exhibit?

15 A I did.

16 Q And in the 101 docket, did you cause to be filed
17 direct testimony and one exhibit?

18 A I did.

19 Q If I asked you the questions set forth in your
20 prefled testimony today, would your answers be the
21 same as set forth in that testimony?

22 A They would.

23 Q And are all of the exhibits you submitted true and
24 accurate copies of those exhibits?

25 A They are.

1 MR. NOWICKI: I do have some oral
2 surrebuttal for this witness; and it's going to
3 focus on the written surrebuttal testimony of
4 Mr. Kurt Kielisch.

5 Q There should be a binder up on your desk with the
6 testimony of Mr. Kielisch if you want to use that for
7 reference. And I'm going to start in his
8 surrebuttal.

9 Your Honor, may I approach? I think I
10 have the binder.

11 EXAMINER NEWMARK: Yes. Go ahead.

12 A Thank you.

13 BY MR. NOWICKI:

14 Q Mr. MaRous, do you have the Kielisch surrebuttal
15 testimony in front of you?

16 A I do.

17 Q Can you go to page 5, lines 12 through 15. Let me
18 know when you're there.

19 A I'm there.

20 Q In this part of Mr. Kielisch's surrebuttal, he states
21 that the recession of 2008 was not a factor in the
22 current market value of the Kites' property; and he
23 argues it would be improper to factor that recession
24 into the current market value. Do you agree with
25 Mr. Kielisch's statement?

1 A No.

2 Q Why not?

3 A Number one, the Kite property sold at the end of 2005
4 for approximately \$180,000. And this was near the
5 top of the residential market which generally peaked
6 probably mid to late 2006. Then this area and pretty
7 much the entire U.S. and definitely the midwest got
8 hit with what's called the real estate depression.
9 And most properties similar to the Kites' dropped 20
10 to 40 percent because of market conditions,
11 uncertainty in jobs, et cetera.

12 In reading Mr. Kielisch's report, there's
13 no discussion of any improvements or upgrades or
14 money spent subsequent to the purchase. And
15 basically what happened, and he provided some nice
16 trend analysis in his report, but it generally took
17 'til 2013 to '16 for most of these similar markets to
18 recover to their pre-recession price levels. He
19 reviewed my criticisms of this fact and in his
20 surrebuttal still did not respond to any improvements
21 or any reasons that the price would have increased or
22 value would have increased from 180 to \$298,000
23 during the time period.

24 Q Okay. Thank you. In Mr. Kielisch's surrebuttal
25 page 7, lines 14 through 21, Mr. Kielisch addresses

1 your comment regarding this 5 percent reduction
2 figure he has used relating to a wind farm and your
3 view that there's no logical reason why a 5 percent
4 reduction would then transfer into 40 percent
5 reduction based upon a solar farm, that being a
6 reduction in the property value.

7 How do you respond to his -- I guess his
8 explanation of the 5 percent reduction?

9 A Well, first of all, I'm very familiar with wind
10 farms. Obviously in his exhibits, his original
11 report, we can see the turbines off northwest in the
12 distance, he states 2,600 feet. There is a
13 reasonably clear line of sight to the turbines. One
14 of his comments is these are older turbines, which
15 they are, so they're not as high and visible as some
16 of the new turbines. But, again, if you look at wind
17 farms, the trend is after a certain time period for
18 potential redevelopment, and some of the new turbines
19 are almost double the height of these existing
20 turbines, number one. Number two, in previous
21 reports I've seen in the wind industry, Mr. Kielisch
22 has indicated negative impacts of turbines. And, in
23 fact, the Kites bought their property after the
24 turbines existed; and they're clearly more visible
25 based on the height of 300-plus feet than the solar

1 arrays will be in the area of 12 feet.

2 His comment is that the turbines are 2,600
3 feet away; but the average distance that is proposed
4 for the subject of the solar arrays is still pretty
5 significant, it's about a thousand, just over a
6 thousand feet. And if turbines are such a negative
7 of 5 percent, his adjustment for the proximity of the
8 solar arrays of 40 percent is an 800 percent
9 increase. It just doesn't seem to be logical and is
10 not supported in the report.

11 Q Can you turn to Mr. Kielisch's report, which I think
12 is another tab on the binder you have in front of
13 you.

14 EXAMINER NEWMARK: Can I interject just
15 for a clarification. Mr. MaRous, when you said the
16 wind farms are subject to redevelopment, can you
17 just define what you mean by that.

18 THE WITNESS: So basically the technology
19 that is evolving when the existing wind farm which
20 is proximate to the Kites' property was developed,
21 they were in the range of 250 to 300 feet. If there
22 is a good wind pattern now 15- to 20-plus years in
23 the future, there are going to start to be some
24 redevelopment of these existing turbines. And
25 basically it's numbers, it's a half a megawatt or a

1 little over a megawatt and the new ones are 2.2 to
2 4.2 megawatts, they're being redeveloped with
3 significantly higher structures.

4 Now, I'm not saying they've gone in for
5 permitting; but this is just one of the trends, and
6 the property owners in the area have generally been
7 very receptive because it's such a significant
8 impact because most of these pay taxes and also land
9 payments based on their megawatt capacity.

10 EXAMINER NEWMARK: Okay. Thanks. I just
11 wanted to be sure what you meant. Go ahead.

12 BY MR. NOWICKI:

13 Q If you could go to Mr. Kielisch's report at page 30,
14 I have a couple questions for you about that.

15 EXAMINER NEWMARK: And which exhibit is
16 that? Just for the record.

17 MR. NOWICKI: I believe this is
18 Kite-Kielisch Exhibit 2.

19 EXAMINER NEWMARK: Thanks. Go ahead.

20 BY MR. NOWICKI:

21 Q In the middle of that page of the chart, I guess
22 toward the bottom of the chart in that page, there's
23 a column Miscellaneous. Do you see that?

24 A I do.

25 Q And there's a reference to this estimate of a 5

1 percent figure. Do you see that also?

2 A I do.

3 Q Were you able to find any support in Mr. Kielisch's
4 report --

5 MS. THOMPSON: Objection. We covered this
6 in his prior question and I think it's been
7 addressed already. There's no need to go further.

8 MR. NOWICKI: Your Honor, Mr. Kielisch has
9 defended his 5 percent in his surrebuttal and
10 attacked the way that Mr. MaRous has criticized it.
11 So this is just another response to that. It's
12 different in nature than what has gone before based
13 upon how Kielisch has defended his use of that
14 figure.

15 EXAMINER NEWMARK: Okay. Well, just keep
16 it in response to surrebuttal.

17 MR. NOWICKI: Will do.

18 Q So, Mr. MaRous, on page 30, do you see the 5 percent
19 figure that Mr. Kielisch also referenced in his
20 surrebuttal?

21 A I do.

22 Q Did you find any basis for that 5 percent adjustment
23 in his report that he lists here?

24 A None except referring to a study that he may have
25 done or Mr. Michael McCann may have done. But no

1 factual support.

2 Q Okay. And if you turn to page 56 of Mr. Kielisch's
3 report.

4 MS. THOMPSON: 56 or 66?

5 MR. NOWICKI: Five-six, 56.

6 Q On this page, do you see the 40 percent factor he
7 lists that he defended in his surrebuttal against
8 your criticism?

9 A I do.

10 Q Do you see any factual basis or support in
11 Mr. Kielisch's report for arriving at that 40 percent
12 figure?

13 A In reviewing the three different areas that he delved
14 into and studied, based on what I studied and
15 reviewed, I found no factual support to support his
16 40 percent conclusion.

17 Q Okay. Let's turn back to his surrebuttal testimony
18 at page 8, lines 4 through 8. You had criticized
19 Mr. Kielisch's use of the cost approach.

20 A Page -- ?

21 Q Page 8, lines 4 through 8.

22 A Yes.

23 Q You had criticized Mr. Kielisch's use of the cost
24 approach, and in his surrebuttal he defended his use
25 of the cost approach. How do you address

1 Mr. Kielisch's surrebuttal testimony about that cost
2 approach? What's your response?

3 A Simply in my experience in Wisconsin, if there is
4 market data available, the sales comparison or market
5 approach is what is to be relied on unless you have
6 income-producing property, number one.

7 And, also, when you have a structure that
8 appears to be over 75 years old and clearly has some
9 obsolescence issues and then you've got ancillary
10 metal and storage buildings, the ability to
11 difficultly measure accrued depreciation is really
12 not supportable and was not done in his report. But
13 the cost is a guide. It's not the solution.

14 Q Okay. Staying with page 8, lines 9 through 16, you
15 had criticized Mr. Kielisch's use of the term
16 "taking" in this context. And in his surrebuttal, he
17 it appears to defend his use of the term "taking"
18 including referencing that utilities have a right to
19 condemn property which is, in his words, critical to
20 take into account.

21 Do you believe that taking -- I guess my
22 first question is do you believe that the use of the
23 term "taking" is the appropriate one in light of
24 Mr. Kielisch's surrebuttal testimony?

25 A So, first of all, I've been involved both on public

1 and private side with over a thousand condemnation
2 cases and numerous in the State of Wisconsin on major
3 and smaller projects. Taking comes into play from an
4 appraiser when there is land either physically
5 taken -- and it could be an inch of the property, it
6 could be a temporary easement, it could be a
7 permanent easement. But there's been no taking of
8 the Kites' property, number one.

9 Number two, the potential threat of
10 condemnation by someone that doesn't own the project,
11 because the property is not owned by a public utility
12 company, seems to be speculative. But the reality in
13 life, anybody on a public street has the
14 vulnerability to have their property partially or
15 wholly taken by a public body if they can present
16 need. And to get that, you have to file and you have
17 to have approval and you have to go through a
18 process. I'm not aware any of that has been done.
19 So it appears to be speculative. And if there is a
20 taking of property, by Wisconsin law, market value
21 plus damages has to be paid. So it's not like there
22 wouldn't be compensation.

23 So those are just a quick few of the
24 reasons why in my opinion that's not appropriate.

25 Q Okay. Would you agree that, in his words, the

1 utility's right to condemn is critical to take into
2 account in this particular case? Do you agree with
3 his position?

4 A Not at all for the reasons I just explained.

5 Q Okay. Thank you. Brenda and Casey Kite filed
6 surrebuttal testimony in this case. In that
7 surrebuttal testimony, page 3, lines 5 through 22,
8 which you don't have in front of you, but I will --
9 it's a general question. I think they describe how
10 in some part of your report you rely on data relating
11 to wind facilities in relation to your conclusions,
12 and that in another part of your report you criticize
13 Mr. Kielisch for relying on wind related data. I
14 think they appear to believe that's an inconsistency
15 on your part.

16 Do you believe that your approach to wind
17 data and Mr. Kielisch's approach to wind data
18 represent some sort of inconsistency on your part?

19 A Not at all.

20 Q Why not?

21 A Because my analysis was basically going to the market
22 and interviewing assessors in any county that had
23 over 25 turbines in Illinois, Minnesota, Wisconsin --
24 I'm not sure I did Wisconsin -- but South Dakota and
25 Iowa, to see if the market felt that they were

1 damaged and had applied for a property tax appeal
2 and/or had the assessors done studies and reduced the
3 value in the footprint of a wind farm because of the
4 existence of turbines.

5 And the answer clearly over millions of
6 acres of land, that there had been no granted
7 appeals; in all those states, there had been, like,
8 two appeals that had not been affirmed. So it was
9 basically kind of going to the market to see how the
10 market was responding.

11 Q How would you contrast that with how Mr. Kielisch
12 referred to wind data in his report?

13 A He basically was saying that it had a negative impact
14 on value, within my opinion, really having no
15 supported results or peer-reviewed studies of wind
16 farms in his reports, no matched pair studies, no
17 assessor surveys in his report to come to that
18 conclusion.

19 MR. NOWICKI: Okay. I have no further
20 questions. The witness is available for cross.

21 EXAMINER NEWMARK: Okay. Citizens Utility
22 Board?

23 MS. HANSON: No questions.

24 EXAMINER NEWMARK: Jewell Jenkins
25 Intervenors? Documents? Here she comes. All

1 right.

2 MS. OVERLAND: Yes.

3 (Documents tendered to parties and the
4 witness.)

5 EXAMINER NEWMARK: Okay. So we can mark
6 this -- let me pronounce this right -- MaRous?

7 THE WITNESS: Correct.

8 EXAMINER NEWMARK: So MaRous 2 in the 100
9 and the 101 -- well, actually, are we only dealing
10 with 100 do you think? Well, we'll put them in
11 both.

12 MS. OVERLAND: 100 -- well, okay, both.

13 EXAMINER NEWMARK: You'll just have to
14 file it in both.

15 (Exhibit MaRous No. 2 was marked.)

16 EXAMINER NEWMARK: So it's page JJW 83,
17 84, 87, 92 and 93. Go ahead.

18 CROSS-EXAMINATION

19 BY MS. OVERLAND:

20 Q Good afternoon, Mr. MaRous.

21 A Good afternoon, Counsel.

22 Q Referring to these data requests that are in front of
23 you, did you respond to these?

24 A Yes.

25 Q And so you recall these answers?

1 A I do.

2 Q In the first one, number 83, my questions are why --
3 well, not why. This was a market analysis. And why
4 did you choose a market impact analysis for this
5 project? And in conjunction with number 892 -- no.
6 Okay. Anyway, why did you choose a market analysis
7 and not a specific appraisal of the property?

8 MR. NOWICKI: Your Honor, I'm going to
9 object. Almost that exact question is 83c and it's
10 been responded to.

11 EXAMINER NEWMARK: Yeah. Do you have
12 anything beyond that -- the answer to that question,
13 or do you want to challenge that answer based on
14 other information?

15 MS. OVERLAND: No. I want to just make
16 sure it gets in.

17 EXAMINER NEWMARK: It -- well, okay.

18 BY MS. OVERLAND:

19 Q I do have specific questions about number 92. Where
20 on page 39 of your report you're referring to --

21 A Can I get to my report?

22 Q Sure. Let's fill some space here describing what it
23 is. Where you're talking about the North Branch
24 Minnesota solar project and some properties involved
25 there.

1 A Yes. So you're going to 92 data request on page 39?

2 Q 38. I'm sorry. 38.

3 A 38.

4 Q 38. Right.

5 EXAMINER NEWMARK: I don't think I know
6 where you are.

7 MS. OVERLAND: I'm on page --

8 EXAMINER NEWMARK: JJW 92?

9 MS. OVERLAND: JJW 92 and page 38 of his
10 report.

11 EXAMINER NEWMARK: Okay.

12 BY MS. OVERLAND:

13 Q Are you there?

14 A I'm there, yes.

15 Q Okay. Great. I wanted to know about the arm's
16 length -- that these -- you're stating these sales
17 were not purchased at arm's length. And I'd like to
18 know if you know anything about those sales, about
19 who bought them?

20 A Sure. I met with and interviewed the developer of
21 the North Star Solar Farm. And basically the
22 proposed solar farm, if we use this room as an
23 example, the solar farm basically surrounded let's
24 say the carpet area in between -- intervening between
25 you and I. It was a large project. And they had

1 property owners with concerns. And basically they
2 made a company decision, because they surrounded this
3 section of landowners, to pay a premium; and during
4 the construction and development period, they used
5 the properties for staging, they rented them out,
6 they put some of their employees there. And then
7 when the project was developed, then they turned
8 around and resold them to market, one of them to the
9 previous property owners who came back and re-bought
10 their property.

11 But the issue was -- it wasn't what was
12 adjoining. It was just because they basically were
13 almost the perfect doughnut hole and that was the
14 company decision they made.

15 Q And does that then refer to the properties on
16 page 38, then also the properties on page 39 of your
17 report? It goes up to -- the property comparison
18 numbers 2, 3 and 4, I'm wondering how many of those
19 were the non-arm's length properties? It goes up to
20 6. If you start on page 38 with number 1 and go to
21 page 42 to number 6, are all of those the non-arm's
22 length purchases?

23 A The answer is some of the earlier sales, you know,
24 it's -- because they bought them over a time period,
25 it's not inconsistent. What the attempt was to show

1 what the transaction was and what the sale was. So
2 after the original -- the second sale, so there was a
3 sale that the developer bought, there was a second
4 sale which is generally the lower price here, and
5 then some of these resold yet again.

6 Q Okay. So to clarify then, these 1 through 6 examples
7 that you gave, those were all developer buyers and
8 then you showed what they sold for afterwards?

9 A For the most part, yes.

10 Q For the most part. What I'm trying to get at,
11 yes/no, is are the numbers 1 through 6 examples
12 there, were those ones where the developers bought
13 the property?

14 A So the answer is that I believe -- I believe in most
15 situations, these are after the developers bought and
16 then they resold to the market again.

17 Q Okay. So then numbers 1 through 6 were purchased by
18 the developers and then sold?

19 A At some point, yes.

20 Q Okay. Got it. Thank you. That does it for number
21 92. Number 84, so to clarify, I was asking how these
22 comparisons were weighed when you're looking at a
23 much smaller solar project and doing that in light of
24 this 300 megawatt project, and how that was weighted
25 to address the magnitude of this project, and the

1 impact on value.

2 MR. NOWICKI: I'm going to object. I
3 think that's what the question stated in JJW 84 and
4 that's what the answer provides. So I think that
5 question has been answered by the data request.

6 MS. OVERLAND: Your Honor, it says that
7 they were not necessarily weighed against. So I
8 guess for clarification, does that mean they were
9 not weighed?

10 EXAMINER NEWMARK: Sure. Let him answer
11 that.

12 A Sure. They were the best examples in the State of
13 Wisconsin. There has been really no major solar
14 development. So I thought it was important to put
15 this information in. But because of the small size
16 and the distance away, they were given minimal
17 consideration.

18 BY MS. OVERLAND:

19 Q Okay. Thank you. Those last two words helped.
20 Moving on to 87 and considering -- JJW 87, the data
21 request where -- or asking about the impact of
22 fencing around an area. In this question, you are
23 also making a distinction between participating and
24 nonparticipating landowners. In the last sentence,
25 all adjacent parcels are leased. So then does their

1 participation in this project have an impact on your
2 view of valuation?

3 A Not at all. On this specific question, my conclusion
4 addressed it that they had to be seven feet tall, but
5 they would make them aesthetically pleasing.

6 Q What is your understanding of what will make them --
7 what they will do to make them aesthetically
8 pleasing?

9 A They will work with the design in part of the
10 approval process to develop a fence that gets
11 approval. I'm not really -- I'm not an architect and
12 I'm not here to create a taste test. I'm just
13 providing my opinion.

14 Q Okay. Good enough. And then looking at 93, I think
15 these were all answered. Okay. One moment. In
16 response to 93, 93a, where the local professionals
17 and assessors were not familiar with solar on a
18 larger scale, how then does -- how do they evaluate
19 it if they're not familiar with it?

20 MR. NOWICKI: Your Honor, I don't know if
21 the witness -- you have a copy of the -- the witness
22 has a copy of the question and answer. I think he
23 goes on to answer that. So if there's any questions
24 about his answer, about what they did rely on, I
25 think that would be appropriate. But the one that

1 was asked has already been addressed in the
2 question.

3 MS. OVERLAND: It has not been answered.
4 I'm asking what they did, like, to familiarize
5 themselves with the project. If they're looking at
6 stating an opinion about a project, but you don't
7 know anything about it; you know, it says, yes,
8 they're familiar with the local market and its
9 trends, but what about solar which is what this
10 is -- their opinions were asked about about solar
11 and this development.

12 EXAMINER NEWMARK: Can you elaborate on
13 that last sentence for 93a as to what you meant by
14 the significance of their familiarity with local
15 marketing trends, how that relates to the question,
16 to the study that you did.

17 THE WITNESS: Sure. First of all, they're
18 familiar, very familiar with their local market and
19 trends. And sometimes these trends are changing as
20 to potential change in highest and best use, as we
21 can refer to Fox Point [sic] down -- the \$10 billion
22 project in southeast Wisconsin, which a lot of dairy
23 down there and agricultural land, the highest and
24 best use is changing. Renewables, both solar and
25 wind, have been, you know, basically on the radar

1 for the assessing body for quite a few years.

2 There's a lot of articles on it. So they
3 have familiarity. If it hasn't been developed or
4 they don't have any expertise -- and I don't know
5 what outside expertise they may have had, I can't
6 really answer that. But this is something that's
7 upcoming just as impacts, you know, of the China
8 embargo on soybeans and, you know, changes in crop
9 prices, because they look at agricultural land based
10 on their productivity.

11 So they're looking at trends and they are
12 looking to other markets. Most of them belong to
13 organizations like the IAAO where there's programs
14 where they educate themselves. So as to how good
15 they are, I can't comment. But they're down and
16 observing the market conditions and paying
17 attention, trying to understand the impacts, as this
18 study provided to this use that obviously this is a
19 large development in Wisconsin, not only in Iowa
20 County.

21 MS. OVERLAND: Okay. Thank you. That
22 does it for 93. I offer these and then no further
23 questions.

24 EXAMINER NEWMARK: I'm sorry?

25 MS. OVERLAND: I offer these and then no

1 further questions.

2 EXAMINER NEWMARK: Okay. Great. Any
3 objections?

4 MR. NOWICKI: No objections.

5 EXAMINER NEWMARK: All right. So I
6 believe that's going to be MaRous 2 in both dockets
7 and -- let's just go off the record for a quick
8 second.

9 (Discussion off the record.)

10 (Exhibit MaRous No. 2 received.)

11 EXAMINER NEWMARK: All right. Let's get
12 on the record. Questions?

13 MS. THOMPSON: I have a couple questions,
14 question.

15 CROSS-EXAMINATION

16 BY MS. THOMPSON:

17 Q Mr. MaRous, did you complete a full appraisal of the
18 Kite property?

19 A I did not.

20 Q Okay. And the record shows that Badger Hollow made
21 options to purchase for sure the Bishop family and
22 the Melby family's residence. Did you perform
23 individual evaluations or appraisals of those
24 properties?

25 A I did not.

1 Q Okay. You issued your report on November 19th and it
2 was filed with the Commission on the 20th. And then
3 Mr. Litchfield has testified to the fact that he
4 entered into a local operating agreement that allows
5 solar arrays to be put within 50 feet of a party's
6 property line.

7 Did you amend your report to reflect that
8 fact that that operating agreement has been agreed to
9 by Iowa County and all of the surrounding towns
10 related to this project?

11 A I have not amended my report.

12 Q If you knew today that solar panels would be placed
13 within 50 feet of the property line of the entire
14 Kite property, would your analysis change?

15 MR. NOWICKI: I'm going to object --

16 BY MS. THOMPSON:

17 Q You testified -- or your report says that there's
18 zero impact on any nonparticipating landowner's
19 property as a result of the project. Assuming for
20 the purposes of this question, as the layout
21 continues to change, if the project was put within 50
22 feet of all three sides of the Kite property, would
23 your opinion of the value of their property change?

24 MR. NOWICKI: I'm going to object because
25 I think it remains an improper hypothetical given

1 the testimony in this case about what the setbacks
2 are and will be.

3 MS. THOMPSON: And with --

4 EXAMINER NEWMARK: Overruled. Go ahead.
5 Let him answer.

6 A So I was aware of the Kites' concern, and I believe
7 my name was tendered to do an appraisal. I had
8 discussion with Mr. Litchfield in regard --

9 BY MS. THOMPSON:

10 Q Mr. MaRous, my question is related to the local
11 operating agreement. If it was implemented on any
12 property, not just the Kites', if any property owner
13 nonparticipating had solar panels put within 50 feet
14 of their property line, you indicate now today that
15 your report says there would be zero impact, zero, on
16 any nonparticipating landowners. If, in fact, there
17 are solar panels put in 50 feet all around a
18 nonparticipating landowner property, does your
19 opinion remain that there will be zero impact?

20 MR. NOWICKI: I'm going to object to form.

21 A I can't answer without a long, long explanation
22 because --

23 BY MS. THOMPSON:

24 Q That's okay.

25 A -- there's reasons for that.

1 MS. THOMPSON: I'm okay. No further
2 questions.

3 EXAMINER NEWMARK: Okay. I have no
4 questions. Okay. Anyone else? Parties? Staff?
5 No? Redirect?

6 MR. NOWICKI: No.

7 EXAMINER NEWMARK: All right. Thanks.
8 You're excused.

9 THE WITNESS: Thank you, Your Honor.
10 (Witness excused at this time.)

11 EXAMINER NEWMARK: Okay. Do we still have
12 an applicant witness?

13 MR. NOWICKI: Yes. We have two more
14 witnesses, Your Honor. Our next witness is Andrea
15 Giampoli.

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1 ANDREA GIAMPOLI, APPLICANT WITNESS, DULY SWORN

2 DIRECT EXAMINATION

3 BY MR. NOWICKI:

4 Q Could you please state your name.

5 A Andrea Giampoli.

6 Q How are you employed?

7 A I'm employed by Invenergy.

8 Q Have you prepared and caused to be filed certain
9 testimonies and exhibits in these matters?

10 A Yes, I have.

11 Q In the 100 docket, have you prepared and caused to be
12 filed direct, rebuttal and surrebuttal testimony
13 including one exhibit?

14 A Yes, I have.

15 Q And in the 101 docket, have you prepared and caused
16 to be filed direct testimony and one exhibit?

17 A I have, yes.

18 Q And in the course of your testimony, you also refer
19 to additional documents that have been also submitted
20 by other witnesses or in the application; is that
21 correct?

22 A Correct.

23 Q If I asked you the questions set forth in your
24 testimony, in your prewritten testimony today, would
25 your answers be the same as set forth in the

1 prewritten testimony?

2 A Yes, they would.

3 Q Are the exhibits to your testimony true, complete and
4 correct?

5 A Yes.

6 MR. NOWICKI: I do have one oral
7 surrebuttal question for Ms. Giampoli.

8 Q And this relates to the surrebuttal testimony of
9 Commission witness Paul Rahn. On page 2, lines 5
10 through 22, and I think it goes on to page 6 of his
11 surrebuttal testimony, he makes reference to an avian
12 mortality study. Do you recall that reference in his
13 study?

14 A I do.

15 Q Okay. And this is a subject matter that related to
16 an avian mortality study as opposed to or maybe in
17 the context of a Wildlife Response & Reporting
18 System. Do you recall those subject matters being
19 discussed back and forth?

20 A I do, yes.

21 Q Can you please describe the Wildlife Response &
22 Reporting System, as you understand it, that
23 Invenergy may employ?

24 A Sure. So Invenergy does have an internal policy
25 which requires its operations and maintenance

1 technicians to report data and photographs
2 surrounding all wildlife incidents, for example, if a
3 carcass or injured animal was observed on site. The
4 operations and maintenance technicians are trained
5 upon on-boarding and annually on this procedure. It
6 basically requires them to collect data and take
7 photographs of these carcasses or injured wildlife or
8 wildlife incidents and to input them into an online
9 database which is shared with their manager and then
10 forwarded to the environmental manager on site.

11 The environmental manager will then take
12 this information, including the photographs, and
13 share those with a biological consultant to confirm
14 the species of the wildlife so that those can be --
15 so that information can be included in the reporting.
16 That information is collected and stored in an online
17 database with Invenergy. The environmental manager
18 will then assess the wildlife impacts after each
19 reporting as well as annually to identify if there
20 are any trends with the wildlife incidents that are
21 occurring on each site.

22 MR. NOWICKI: Thank you. I have no other
23 questions for this witness. Ms. Giampoli is
24 available for cross-examination.

25 EXAMINER NEWMARK: Okay. CUB, any

1 questions?

2 MS. HANSON: No questions.

3 EXAMINER NEWMARK: No? Jewell Jenkins
4 Intervenors?

5 MS. OVERLAND: Yes. However, I don't have
6 a pile of documents for you.

7 EXAMINER NEWMARK: Well, that's something,
8 anyway.

9 CROSS-EXAMINATION

10 BY MS. OVERLAND:

11 Q Good afternoon, Ms. Giampoli.

12 A Good afternoon.

13 Q Since we were just talking about avian protection or
14 avian plans, have you worked on an avian protection
15 plan in any other project?

16 A Yes, in other projects.

17 Q And which project would that be?

18 A There are various projects I work on for Invenergy
19 that I've prepared an avian protection plan for.

20 Q And is it correct that Wisconsin does not have a
21 requirement of an avian protection plan?

22 A I am not aware of any requirement to prepare one.

23 Q And is one of the ones that you have worked on the
24 Freeborn Wind project in Minnesota?

25 A Yes.

1 Q And in that, you did prepare an avian -- or was that
2 an avian protection plan or an avian and bat
3 protection plan?

4 A In Minnesota, that document is called an avian and
5 bat protection plan.

6 Q And you did prepare that?

7 A I did -- we had a consultant prepare the document. I
8 reviewed it and finalized it with the ultimate owner
9 of that project.

10 Q Is there any prohibition of providing an avian or
11 avian and bat protection plan in Wisconsin?

12 A Not that I am aware of. But I will say that avian
13 and bat protection plans, or otherwise known as bird
14 and bat conservation strategies, are often prepared
15 for wind projects and not for -- not particularly for
16 solar projects.

17 Q Are you familiar with the notion that birds can be
18 attracted and fly into PV panels?

19 A I'm familiar with the hypothesis, yes.

20 Q Is that something that would rise to the level of
21 having an avian protection plan?

22 A I think that if there were measurable impacts or
23 significant impacts that were documented, for
24 example, in this wildlife reporting system we were
25 planning to implement, then potentially there may be

1 a need to identify next steps, one of which could be
2 preparing an avian protection plan.

3 Q Is that something then that you would -- or the
4 company would be -- would offer as a permit condition
5 that that occur?

6 A I'm not in a position to make that commitment at this
7 time.

8 Q Has Invenergy ever done an avian protection plan for
9 any solar project?

10 A I have not worked on any, and I don't want to
11 speculate about what's been done in other projects.

12 Q Okay. Also, in your background, let me get to that.
13 And you don't have any education, you know, a degree
14 in environmental sciences, do you?

15 A I have a law degree.

16 Q And then so essentially your environmental experience
17 has been on-the-job training; is that correct?

18 A That is correct. I have four and a half years of
19 experience with Invenergy in this position.

20 Q And I wanted to talk something about the ground cover
21 strategy which you mentioned in your -- the testimony
22 in your direct. But it wasn't included. Now, it is
23 in the record as Litchfield something-or-other. And
24 I noticed that there was a lot of information on
25 what's there, but --

1 EXAMINER NEWMARK: Litchfield 17.

2 MS. OVERLAND: Pardon me?

3 EXAMINER NEWMARK: Litchfield 17.

4 MS. OVERLAND: 17. Okay.

5 Q But I noticed there wasn't much about what it was
6 that the company was planning on doing. So could you
7 explain, for example, there was reference to mowing;
8 and how will that be accomplished? How often --

9 MR. NOWICKI: Your Honor, I'm going to --
10 I'll object. I think the ground cover strategy
11 references mowing. It includes date ranges of
12 mowing and perhaps frequency. So I think this is
13 addressed in the ground cover strategy which should
14 probably be the reference point for further detailed
15 questions as opposed to the open-ended one that the
16 document answers.

17 EXAMINER NEWMARK: Yes, I agree. If you
18 have specific questions on the ground cover study,
19 assuming this is the correct witness to address that
20 to, let's get the study out and you can ask
21 specifics and attempt to clarify what you want
22 clarified.

23 BY MS. OVERLAND:

24 Q Well, for example, things that are missing in it.
25 How are the plantings going to be done? There is no

1 information in that about how the -- if it will be a
2 mechanized planting, if it will be -- so how will the
3 plantings be done?

4 MR. NOWICKI: I'm going to object. I
5 think that's argumentative. I think it's covered in
6 the ground cover strategy.

7 MS. OVERLAND: It's not. Let's get it
8 out.

9 EXAMINER NEWMARK: Well, that's what we --
10 A I would agree that that's in our testimony. It
11 mentions that there will be no-till drilling --
12 no-till drilling for seeding as well as dispersal for
13 seeding. In my surrebuttal, I also provided examples
14 of types of drills or dispersal systems that will be
15 used for that seeding.

16 BY MS. OVERLAND:

17 Q And will that be before or after the panels are in
18 place?

19 A The strategy is such that the -- basically outlines
20 what the approach will be. But there is a lot that's
21 still, you know, evolving about the project, the
22 placement of the panels, where they'll be placed in
23 relation to different soil types and to where certain
24 types of herbicides are used.

25 So there's -- it outlines a strategy that

1 will be taken, but the -- how exactly the plan will
2 be carried out is yet to be determined based on the
3 timeline, the time of year the project goes into
4 construction. A lot of that needs to be factored in
5 before we can finalize what the actual vegetation
6 approach will be.

7 Q And then we also have concerns about, like, what the
8 mix will be of the seeds, what type of plants will
9 be -- you know, how dense and what it costs. Do you
10 have any information about that? It is not in the
11 ground cover strategy.

12 MR. NOWICKI: Your Honor, I'm going to
13 object. I think those issues -- at least a number
14 of them are addressed in the ground cover strategy,
15 so I'd refer to that. These open-ended questions
16 are going to just take a lot of time perhaps to
17 winnow down as to what is actually covered or not.

18 EXAMINER NEWMARK: I believe the mix is in
19 the -- it's either in the study or in an exhibit
20 somewhere. Because I -- unless you know something
21 of a different document.

22 MS. OVERLAND: That's what -- Mr. Jewell
23 answered one about a mix that he used. But not --
24 there's nothing in the ground cover study about mix.
25 That's why I raised that issue. Because how you

1 grow the -- what makes you pick, first there's a
2 cost factor, huge, and then there's a -- how will
3 they actually be able to grow under panels. And the
4 mix has a big impact on whether they can grow or
5 not.

6 A There are pages of potential seed mixes listed in the
7 ground cover strategy. It also identifies how many
8 of each species will be used.

9 Q It's an answer, but it's not what we're looking for.
10 Okay.

11 MR. NOWICKI: I'm going to object to the
12 characterization of the testimony and those kinds of
13 editorial comments.

14 MS. OVERLAND: Well, I'm moving on.

15 Q What techniques will be used to prevent erosion?
16 Because with the angle of the panels, it will tend to
17 fall in one place in a line where erosion is very
18 possible. So what techniques will be used?

19 MR. NOWICKI: Your Honor, I believe that
20 Badger Hollow submitted an erosion plan as part of
21 its application. This is a very general question --

22 MS. OVERLAND: That's true.

23 MR. NOWICKI: -- that is probably
24 addressed first by that plan. And if there's any
25 follow-up questions on that and if this is the right

1 witness to address them, I think that would be
2 appropriate. But a broad question like that is not.

3 EXAMINER NEWMARK: Yeah. If it's covered
4 already.

5 MS. OVERLAND: Okay. Then I have no
6 further questions at this point.

7 EXAMINER NEWMARK: All right.

8 EXAMINATION

9 BY EXAMINER NEWMARK:

10 Q I actually did have a question regarding ground cover
11 because I have tried desperately with no success to
12 grow native plants in my yard. But I won't ask you
13 about my yard.

14 I'm just curious, if the seeds don't take,
15 will the operator, the -- I guess I should be careful
16 of who I'm addressing this to. I guess would the
17 future plan be to keep reseeding until -- or trying
18 different seeds until the appropriate -- an
19 appropriate ground cover is established?

20 A Yes. That's the plan. We expect that because native
21 plantings do take longer and they're harder to take
22 or they take longer, that there will be ongoing
23 maintenance, especially in the first two, three years
24 of the project when we're really waiting for those
25 plants to establish.

1 Q Okay. So it would involve reseeding or trying
2 different seeds?

3 A Correct.

4 EXAMINER NEWMARK: Okay. Thanks. The
5 Kites, any questions?

6 MS. THOMPSON: I don't have any questions.

7 EXAMINER NEWMARK: Okay. And any other
8 parties? Commission staff?

9 MR. RUSZKIEWICZ: Yeah, Your Honor, I have
10 a few questions here.

11 CROSS-EXAMINATION

12 BY MR. RUSZKIEWICZ:

13 Q Drawing your attention back to this discussion we had
14 about the avian protection plan. Would you describe
15 the avian protection plan as a more robust data
16 collection plan than what the applicant has proposed
17 as far as the incident report?

18 A What type of avian protection plan generally are you
19 referring to?

20 Q In your discussions with Commission staff, an avian
21 protection plan as far as impacts on birds flying
22 through the air that may interact with solar panels.

23 A Sorry. I'm confused if you're referencing the
24 wildlife reporting system?

25 Q I'm asking for a comparison. Which was a more robust

1 data collection mechanism?

2 A So typically a wind facility will develop an avian
3 protection plan which outlines all of the
4 pre-construction avian surveys that have been
5 conducted on site and basically the steps that were
6 taken during development and construction to minimize
7 impacts to birds. A wildlife reporting system is one
8 in which all wildlife incidents, for example,
9 carcasses or injured animals that are identified on
10 site by on-site technicians are reported and are
11 collected and stored in an online database
12 internally. At least that's what Invenergy does.

13 Q Okay. So that report is by definition incidental,
14 correct?

15 A Correct.

16 Q So now drawing your attention to solar facilities as
17 opposed to wind. Is there data out there as far as
18 avian mortality in regards to solar facilities such
19 as the one proposed by the applicant?

20 A There is limited data out there on solar energy's
21 impacts on birds generally. The data that does exist
22 is largely related to concentrated solar facilities.
23 I do know of research that is being conducted in the
24 southwest that's looking at this lake effect
25 hypothesis that there's a potential that migrating

1 water birds may be attracted to PV solar facilities
2 because from far overhead they look like water.
3 That's something I know that there's ongoing research
4 on that issue. We work regularly with the
5 consultants that are conducting that research. And
6 to date -- to my knowledge there hasn't yet been a
7 significant -- we haven't identified a significant
8 collision risk for birds related to PV solar
9 facilities. But that is something that's still being
10 studied.

11 Q So would you say that an avian protection plan would
12 provide useful data to analyzing avian mortality with
13 solar projects, particularly in the midwest?

14 A So I think, again, we're confusing the terms. An
15 avian protection plan is one that identifies the
16 steps taken by a developer to minimize their impact
17 and contains all the information and data of all the
18 pre-construction work that was done. And so I guess
19 that I'm -- what exactly is your question related to
20 then?

21 Q Well, would you learn something about avian mortality
22 based on the implementation of that plan that is
23 proactive as you're describing?

24 A That -- so that in and of itself wouldn't teach us
25 anything about potential impacts. It really outlines

1 what steps would be taken if there were potential
2 impacts.

3 So an avian protection plan often has an
4 adaptive management approach. So if there is, you
5 know, a mass collision event, for example, or there's
6 something that triggers a question of -- or you're
7 identifying trends of collision in a certain season
8 or in a certain area of a wind facility. You know,
9 what steps would be taken if you identified that
10 issue. So that's -- it's more-so outlining an
11 approach to be taken if an issue was identified. And
12 so it wouldn't, it wouldn't in and of itself teach us
13 anything about the site.

14 Q Is it an ongoing plan and mitigation process? I'm
15 sorry, I'm just, you know, using some lay terms here.
16 But is that how it works?

17 A For our operating wind projects, they are considered
18 live documents. As more information is collected,
19 they may be integrated into the document. It's also
20 live in that we're -- if issues are identified, if an
21 adaptive management plan, for example, is triggered,
22 that that will continue to go back to that document;
23 and it continues to be revised with up-to-date
24 information. So it is a live document, so to speak.

25 Q Okay. So potentially it could be ended at some point

1 if it was found out that it was no longer needed,
2 correct?

3 A Theoretically, I guess so.

4 MR. RUSZKIEWICZ: Okay. No further
5 questions.

6 EXAMINER NEWMARK: Okay. Redirect?

7 MR. NOWICKI: Yes.

8 REDIRECT EXAMINATION

9 BY MR. NOWICKI:

10 Q Ms. Giampoli, is the Wildlife Response & Reporting
11 System a method by which data -- as you described it,
12 a method by which data can be obtained regarding
13 bird -- or avian mortality as related to the solar
14 project?

15 A Yes. It is through that reporting system that all of
16 the data on potential impacts to birds would be
17 stored and collected.

18 Q Okay. And I think you testified in response to a
19 question that a bird -- bird and bat conservation
20 study -- or I may not have the exact wording
21 correct -- are often prepared for wind, but not for
22 solar. Do you remember that testimony?

23 A Yes.

24 Q Do you know why that's the case?

25 A Well, wind facilities generally relative to solar

1 facilities, there's more of a concern about impacts
2 to flying birds and bats because by the nature of a
3 wind turbine design, it's, you know, a turbine
4 spinning in the air and there is more potential for
5 that -- there to be impact there.

6 MR. NOWICKI: No further questions.

7 EXAMINER NEWMARK: Okay. Thanks very
8 much. You're excused.

9 MR. RUSZKIEWICZ: Just one clarification
10 there.

11 RECROSS-EXAMINATION

12 BY MR. RUSZKIEWICZ:

13 Q So in the plan you're proposing, a staff person would
14 actually have to encounter the dead animal carcass,
15 right? That's the mechanism then for reporting
16 obviously the dead animal?

17 A And by staff, do you mean the technician on site?

18 Q Yes.

19 A Yes.

20 Q So there is the potential that that carcass might not
21 be noticed, it could be picked up by another animal;
22 it's really again incidental, correct?

23 A Correct.

24 MR. RUSZKIEWICZ: Okay. Thank you.

25 Nothing further.

EXAMINATION

BY EXAMINER NEWMARK:

Q Okay. And just to elaborate on that a little bit, is there any plan or a schedule for that on-site person to go out and attempt to detect carcasses, or is it just by happenstance if the person is doing work and notices a carcass, that person will record it?

A It would be the latter, that if -- I mean, the technicians are on site regularly. And so in their regular maintenance and moving about a facility, if they identify a carcass, that would be reported.

EXAMINER NEWMARK: Okay. Thanks. Any redirect?

MR. NOWICKI: No further questions.

EXAMINER NEWMARK: Thanks. You're excused.

(Witness excused at this time.)

EXAMINER NEWMARK: All right. So I believe I would be very much in trouble if I don't let us go for a break at this point.

MR. NOWICKI: We just have one more witness, Your Honor.

EXAMINER NEWMARK: Oh, I'm sorry. You do. Oh, that's right. I spoke too soon. Now, I really painted myself in a corner here. Let's see if we

1 can get through him quick, and I will give you a
2 nice break after that. So let's go ahead quickly
3 and get him up.

4 MR. NOWICKI: The applicant calls Neil
5 Palmer.

1 NEIL PALMER, APPLICANT WITNESS, DULY SWORN

2 DIRECT EXAMINATION

3 BY MR. NOWICKI:

4 Q Please state your name.

5 A Neil Palmer.

6 Q How are you employed?

7 A I am the president of Neil Palmer & Associates, LLC.

8 Q Have you prepared and caused to be filed testimonies
9 and exhibits in this case?

10 A Yes, I have.

11 Q In the 100 docket, have you caused -- have you
12 prepared and caused to be filed direct and rebuttal
13 testimony including five exhibits?

14 A Yes.

15 Q And in the 101 docket, have you prepared and caused
16 to be filed 16 pages of direct testimony and five
17 exhibits?

18 A Yes.

19 Q If I asked you the questions set forth in your
20 prefiled written testimony today, would your answers
21 be the same as set forth in that testimony?

22 A Yes, I believe they would.

23 Q And are all of the exhibits related to your testimony
24 complete and correct copies of those exhibits?

25 A Yes, they are.

1 MR. NOWICKI: Okay. I have no oral
2 surrebuttal for Mr. Palmer, so he's available for
3 cross-examination.

4 EXAMINER NEWMARK: I just want to note
5 that we are going to eliminate Palmer 5 and use
6 Litchfield 9 instead.

7 MR. NOWICKI: Yes.

8 EXAMINER NEWMARK: In the 101 docket it's
9 Litchfield 9. In the 100 docket it's Litchfield 10.

10 MR. NOWICKI: Correct.

11 THE WITNESS: We're replacing the JDA --
12 we're taking it out of my testimony.

13 EXAMINER NEWMARK: Yeah. We're --

14 THE WITNESS: It's in Litchfield's.

15 EXAMINER NEWMARK: Right. And any
16 reference we'll make to the Litchfield exhibit.
17 Okay. So questions, CUB?

18 MS. HANSON: No questions.

19 MS. OVERLAND: One.

20 (Documents tendered to parties and the
21 witness.)

22 EXAMINER NEWMARK: Okay. It's JJW 77. We
23 can mark that as Palmer 6 in both dockets.

24 (Exhibit Palmer No. 6 was marked.)

25 CROSS-EXAMINATION

1 BY MS. OVERLAND:

2 Q Good afternoon, Mr. Palmer.

3 A Good afternoon.

4 Q So is it correct that you've been the primary contact
5 person with townships, county, local governments in
6 the area?

7 A I'm hesitating at the word primary. I was, and still
8 am, primarily responsible for immediate contact with
9 local governments, NGOs, state legislative leaders,
10 environmental and agricultural groups. But this is a
11 team approach, so there's times when other parties
12 are involved, like Mr. Litchfield, or other members
13 of the staff.

14 Q And then were you also responsible for soliciting
15 leases in the area?

16 A No, ma'am. I had no involvement in land leasing.

17 Q Okay. And then referring to number 77, which is in
18 front of you. And I have some questions about the
19 memo that is attached, the Iowa County corporate
20 counsel. And was that -- well, what's there is an
21 opinion of the Iowa County corporate counsel. Did
22 you or Invenergy cause that to be prepared?

23 MR. NOWICKI: Objection, vague.

24 A Cause it to be prepared?

25 EXAMINER NEWMARK: I -- well, is that the

1 question? I'll let him answer if that's -- yes, you
2 can answer. I think you know --

3 BY MS. OVERLAND:

4 Q Well, I want to know if the Iowa County corporation
5 counsel did that at their request?

6 EXAMINER NEWMARK: Okay.

7 A No.

8 BY MS. OVERLAND:

9 Q How did that come about, this memo, do you know?

10 A I think the way it came about is that Iowa County
11 counsel, actually like counsel in a couple of other
12 counties where projects are under discussions, was
13 aware of the filing made in the Two Creeks, Two
14 Rivers, or whatever the NextEra project is actually
15 called, where the Manitowoc County corporation
16 counsel issued an opinion about the same topic. And
17 that's what -- and that was prior to Iowa County
18 doing it. It was their knowledge of that and then
19 discussions among the staff, meaning principally the
20 corporation counsel and the zoning and planning
21 director.

22 Q And then were you a part of those discussions?

23 A I was part of at least one meeting; but I was not
24 party to the conversations of the staff among
25 themselves, no, of course not.

1 Q And when you say meeting, you mean a meeting of the
2 county board or -- ?

3 A No, no. There was a meeting that I believe is
4 referred to in a memo that we supplied as a --
5 responding to a data request that we simply had a
6 meeting that I was invited to by I believe the
7 corporation counsel. The county board chairman, the
8 planning and zoning director, and the county
9 administrator were present. And it was in effect
10 then discussing what do they think they're going to
11 do in regard to what had been the previous plan to go
12 through a conditional use process versus the new
13 position, I'll call it, taken by the county
14 corporation counsel, what does that mean. And my
15 desire to be there was in effect to find out what
16 they want us to do. So I was in attendance at that
17 meeting.

18 MS. OVERLAND: I move this to be -- offer
19 this JJW 77. And no further questions.

20 EXAMINER NEWMARK: Any objections?

21 MR. NOWICKI: Your Honor, I think it's
22 incomplete in that I believe there were a couple of
23 emails also attached in the response to this.

24 THE WITNESS: Right.

25 MR. NOWICKI: But as long as the record

1 shows that this is not the complete response, I'm
2 comfortable with as is.

3 MS. OVERLAND: Correct. It's selected.
4 Yes.

5 EXAMINER NEWMARK: Okay. Yeah. You have
6 an opportunity to file the complete document if you
7 want. But I see you noted on the record that that's
8 not necessary. So thanks. So we'll accept Palmer 6
9 for the record.

10 (Exhibit Palmer No. 6 received.)

11 EXAMINER NEWMARK: Okay. Kites have any
12 questions?

13 MS. THOMPSON: I have no questions.

14 EXAMINER NEWMARK: Any other parties?
15 Commission staff? No? Any redirect?

16 MR. NOWICKI: No redirect.

17 EXAMINER NEWMARK: Okay. You aren't going
18 to risk it, huh? Keep people here longer. All
19 right. Thanks very much. You're excused.

20 THE WITNESS: Thank you.

21 EXAMINER NEWMARK: I was prepared to give
22 an hour break. We can go off the record.

23 (Discussion off the record.)

24 EXAMINER NEWMARK: Let's see if we can get
25 back by 2:30 instead of a full hour.

1 (Recess taken from 1:47 to 2:30 p.m.)

2 EXAMINER NEWMARK: We have a request
3 from -- our DNR witness wanted to ask parties if
4 there were any cross for her. If not, I'm going to
5 have her file her testimony by affidavit, verify
6 that by affidavit. So is there any cross for -- I'm
7 trying to avoid saying her last name because I think
8 I'll mispronounce it.

9 MS. RADERMACHER: My first name is worse
10 than my last.

11 EXAMINER NEWMARK: Yes. Ms. Radermacher.

12 MS. RADERMACHER: Radermacher.

13 EXAMINER NEWMARK: Any questions for her,
14 cross questions for her?

15 MR. RUSZKIEWICZ: You want it by
16 affidavit, not --

17 EXAMINER NEWMARK: Yeah. That way we can
18 just move it along, if that's okay. All right. So
19 we can take CUB next. Maybe not.

20 Okay. So we'll move on to Jewell Jenkins
21 Intervenors and take CUB after.
22
23
24
25

1 ALAN JEWELL, JJI WITNESS, DULY SWORN

2 DIRECT EXAMINATION

3 BY MS. OVERLAND:

4 Q Good afternoon, Mr. Jewell. Before you, you have
5 your direct and rebuttal testimony. And did you file
6 or cause to be filed that direct and rebuttal
7 testimony?

8 A Carol, just a second. I'm readjusting my hearing
9 aids. Now I'm with you.

10 Q Okay. Did you cause -- did you file or cause to be
11 filed the direct and rebuttal testimony that's before
12 you?

13 A Yes.

14 Q And also some exhibits?

15 A That is correct, yes.

16 Q And because there's been some changes, I'm going to
17 walk through those. And, let's see, Number 3,
18 Exhibit No. 3 was the local operating contract. And
19 that is now Litchfield 9, so you will not find
20 Exhibit 3 in your pile. It's not there. And so I'm
21 going through the exceptions, things that have been
22 removed. The environmental comments, those were
23 taken out of ERF and need to be reformatted. That's
24 Exhibit No. 6 and you will not find that there. The
25 ground cover study, which was Exhibit 7, that has

1 been removed and that is now Litchfield 17. The
2 number 9 was discovery -- that's been withdrawn
3 because it was discovery that has been produced. And
4 number 12, that's also been withdrawn because that is
5 in the record through another witness.

6 So with those exceptions, are those
7 exhibits ones you prepared for your testimony?

8 A Yes, they are.

9 Q And if we asked you the same questions -- if you were
10 asked the same questions that are in your direct and
11 rebuttal testimony today, would your answers be the
12 same?

13 A Yes, they would be.

14 MS. OVERLAND: And Mr. Jewell is available
15 for cross. I offer him for cross.

16 EXAMINER NEWMARK: Great. Let's go off
17 the record just for a second.

18 (Discussion off the record.)

19 EXAMINER NEWMARK: All right. With that,
20 we can go ahead.

21 MS. OVERLAND: Mr. Jewell is available for
22 cross.

23 EXAMINER NEWMARK: Okay. Applicants?

24 MS. OVERLAND: Oh, I have to offer the
25 exhibits and the testimony.

1 EXAMINER NEWMARK: Actually, that's in the
2 record; now that he verified them, we're good.

3 (Documents tendered to parties and the
4 witness.)

5 CROSS-EXAMINATION

6 BY MR. NOWICKI:

7 Q Good afternoon, Mr. Jewell.

8 A Good afternoon.

9 Q My name is Brian Nowicki. I represent Badger Hollow.
10 I'll be asking you some questions this afternoon.

11 I've handed out what's already been marked
12 as an exhibit, this is Litchfield 14, and these are
13 responses which JJ -- Jewell Jenkins Intervenors to
14 some data requests that Badger Hollow proffered on
15 them. Do you recognize this set of requests and
16 answers?

17 A That you just passed out?

18 Q Correct.

19 A Yes. They look familiar to me.

20 Q Okay. Do you recall participating in answering
21 these?

22 A Yes, I do.

23 Q Okay. The questions go into interests that you and
24 the other participants -- or the other members of
25 Jewell Jenkins Intervenors have in certain property.

1 And if I use the short term JJI, will that -- will
2 you recognize that as the Jewell Jinkins Intervenors?

3 A Yes, I would.

4 Q Okay. Great. With regard to you personally,
5 Mr. Jewell, how many acres of land do you own in Iowa
6 County where you would be individually named at on
7 the deed as the owner?

8 A Marcia and I would be -- we own 226 acres. And then
9 we have a family limited partnership called Oakdale.

10 Q And we'll get to that. But in terms of just you
11 individually or personally as an owner of land in
12 Iowa County, you have 226 acres?

13 A That's correct.

14 MS. OVERLAND: One moment. Could you move
15 the microphone closer. Thank you.

16 BY MR. NOWICKI:

17 Q Is that 226 acres located within ten miles of the
18 Badger Hollow Solar Farm project?

19 A Yes, it is.

20 Q Do you know how far away it's located from the
21 project?

22 A Offhand, to the closest parcel, I'm guessing perhaps
23 seven miles.

24 Q Okay. Seven miles to the north, south, east or west?

25 A To the west of us, perhaps seven miles to the closest

1 parcel of Badger Hollow.

2 Q Okay.

3 A I'm guessing at that.

4 Q And what is the use of that 226 acres? Residential,
5 farmland?

6 A It's mostly farmland.

7 Q Okay.

8 A Two sets of farm buildings there.

9 Q Do you farm that land?

10 A Yes, I do.

11 Q Do you rent out any part of it?

12 A No.

13 Q Okay. You've identified in your responses to our
14 data requests an entity or a trust called the Jewell
15 Revokable Trust. Are you familiar with that entity?

16 A That's what Marcia and I have to hold our estate.

17 Q Okay. How many acres of land are held in that trust?

18 A That would be the same as the 226.

19 Q When you say the same, is it the same property or is
20 it a different --

21 A It's the same property. I may be confused by your
22 question.

23 Q Okay. So my first question was what do you
24 personally own as an individual? Do you own any
25 acreage in Iowa County as an individual, meaning

1 outside of a trust or other organization?

2 A No, I don't think so.

3 Q Okay. So it's all in the trust?

4 A It's in the trust, yes.

5 Q So everything you said about that 226 acres owned by
6 the Jewell Revokable Trust still applies to that
7 property, correct?

8 A I believe so, yes.

9 Q Okay. You've also identified in your responses an
10 entity called Oakdale Farms Limited Partnership?

11 A That's correct.

12 Q What is your interest in that partnership?

13 A I'm the general partner.

14 Q Who are your other partners?

15 A Eunice Jewell.

16 Q Anybody else?

17 A No.

18 Q Okay. Does that en -- am I understanding from your
19 request is that entity owns property within ten miles
20 of the Badger Hollow --

21 A Yes, it does.

22 Q How many miles away from the project area?

23 A Approximately -- some is closer, some is a little bit
24 further away. But all of it would be within ten
25 miles.

1 Q Okay. What would the closest property be to the
2 project, how far?

3 A Six, six and a half miles.

4 Q And how many acres are owned by that partnership?

5 A I'd have to do the math. The total is 1,120 minus
6 226.

7 Q And what is the use of that property?

8 A It's mostly farm ground.

9 Q Do you or members of the Jewell family farm that
10 property?

11 A Yes, I do.

12 Q Is any of that property rented out to members outside
13 the Jewell family?

14 A No, it's not.

15 Q Okay. You've also identified the Charles Mueller
16 Trust as an entity having an interest in land within
17 ten miles of the project. Does it actually own land
18 within ten miles of the project?

19 A Yes, it does.

20 Q Okay. How many acres does it own?

21 A I believe it's 160.

22 Q Eleven-sixty or one-sixty?

23 A 160.

24 Q And how far away from the project is that acreage?

25 A Essentially immediately adjacent.

1 Q And what is the current use of that farmland -- of
2 that property?

3 A It's row crops, alfalfa.

4 Q Is it farmed by members of the Jewell family?

5 A Currently this last year it was farmed by Marcia's
6 brother, my wife's brother. We have run it for many,
7 many years prior to that in conjunction with him.

8 Q Okay. Does Marcia's brother rent that property for
9 the purpose of farming?

10 A Yes, he does.

11 Q What does he --

12 A From the trust.

13 Q Pardon me?

14 A From the trust.

15 Q So he pays rent to the Charles Mueller Trust for
16 the -- for the ability to rent that property,
17 correct?

18 A That's correct.

19 Q And how long has he been doing that?

20 A We have had for at least -- for at least six years,
21 we run it in conjunction with him; and so this would
22 have been his seventh year. And I might be off by
23 several years, I'm not sure. It might be more than
24 that. It's at least six years.

25 Q Okay. With regard to the trust, is there a person or

1 group of people who are in control of the decisions
2 made by the trust?

3 A Yeah. I believe it's Johnson Block & Company,
4 Mineral Point. They're the trustees.

5 Q Okay. So if there were any decisions to be made
6 about selling that property, who would be the
7 decision-maker for that kind of a transaction?

8 A I think they would defer to the family.

9 Q The family being the Jewell family?

10 A The Mueller family.

11 Q The Mueller family. Okay. And what's the
12 relationship between the Mueller family and the
13 Jewell family?

14 A I'm married to Marcia Mueller.

15 Q Okay. So with regard to you and Marcia, do you have
16 any authority to sell the property of the Charles
17 Mueller Trust?

18 A Not at this time.

19 Q The people who would have that authority would be the
20 members of the Charles Mueller family working through
21 the trustees?

22 A I believe that that property is tied up within the
23 estate plan, and I believe that nobody has the
24 ability to sell it until Evelyn Mueller dies. So how
25 that shakes forth to your question, I don't know how

1 to answer it.

2 Q Sure. And you -- I think you said you have an
3 interest in that land. How would you describe your
4 interest in that land owned by the Charles Mueller
5 Trust?

6 A My wife is a named heir.

7 Q Okay. But currently neither you nor your wife have
8 any rights to sell the land or divide it or take any
9 action with it, correct?

10 A That's correct.

11 Q Okay. Thank you. You also identified the Evelyn
12 Mueller Revokable Trust. How many -- as an entity or
13 trust that owns property within ten miles. How much
14 property does the Evelyn Mueller Revokable Trust own?

15 A Evelyn and the Charles Mueller Trust I believe is a
16 total of 400 acres. So you would have to back off
17 160 from 400.

18 Q Okay. So if we say 240 on the Evelyn Mueller
19 Revokable Trust gets us to 400, does that sound about
20 right?

21 A That would be approximately correct, yes.

22 Q And how far from the project is the Evelyn Mueller
23 Revokable Trust property?

24 A It, again, is immediately adjacent.

25 Q Is any part of the Evelyn Mueller Revokable Trust

1 property participating in the project?

2 A Yes. There's 40 acres.

3 Q Do you know who decided -- well, before I ask that.

4 So what is your particular interest in the Evelyn

5 Mueller Revokable Trust?

6 A Marcia is a named heir to that.

7 Q Currently do you or Marcia have any right to sell or

8 dispose of the land owned by the Evelyn Mueller

9 Trust?

10 A We do not.

11 Q When would you acquire those rights?

12 A Upon Evelyn's death.

13 Q Okay. Is part of the Evelyn Mueller Revokable Trust

14 property participating in the project?

15 A Yes, it is.

16 Q Who decided that that part -- that part of that

17 property would be participating in the project, if

18 you know?

19 A Evelyn did, as far as I know. I believe that she had

20 a contractual agreement with Badger Hollow sometime

21 last winter. She did not tell Marcia or I her

22 participation in that until November 8th of 2018.

23 Q Okay. Is it your understanding that Evelyn Mueller

24 is the person who has the right to make decisions

25 about what to do with the land owned by the Evelyn

1 Mueller Trust?

2 A Yes, I believe she does.

3 Q Okay. Is it your understanding that Evelyn Mueller
4 had the right and authority to enter into any
5 contract with Badger Hollow if she desired to do
6 that?

7 A I believe so, yes.

8 Q Are you concerned that your position in this
9 proceeding may prevent participating landowners from
10 using their land in the way they would like to use
11 it, such as by granting easements or leases --
12 entering into easements or leases with Badger Hollow?

13 A Are you speaking in general terms to every landowner?

14 Q Yes. Yes.

15 A And, please, would you repeat the question.

16 Q Sure. Are you concerned that your position in this
17 proceeding will prevent participating landowners from
18 using their land to support the project?

19 A I think it's been our contention all along that we
20 recognize that there wasn't a setting of rules for a
21 project of this size and we'd like to see the rules
22 established; and going forward for that, I would have
23 no disagreement for people that wish to participate.
24 It's just that an absence of the rules allowed for a
25 lot of chaos.

1 Q Is it your view that people who want to participate
2 should not be able to do so until those rules to your
3 liking are established?

4 A Not my liking. It has nothing to do with it. I'd
5 like to see the community develop the rules, and then
6 however it would go forward from that is the
7 community's choice.

8 Q If you turn in the document I provided to page -- I
9 think it's data request number 5. Data request
10 number 5 asks about information relating to an
11 individual hardship that JJI contends may -- it may
12 suffer as a result of the project. Is that a fair
13 summary of what this subject matter is?

14 A I'm trying to refresh my memory, sir.

15 Q Sure.

16 A And so the question is -- would you please restate
17 that.

18 Q Sure. Well, let me just jump right into the question
19 if you've had a chance to refresh your memory about
20 it, the question that I have.

21 It appears from this response that JJI is
22 claiming or is stating that Mr. Wendhausen is renting
23 226 acres of farmland from a couple of owners,
24 correct?

25 A Yes.

1 Q And then if you go to the bottom paragraph, it
2 describes the loss of this farmland that is
3 contracted for Badger Hollow will negatively impact
4 Mr. Wendhausen's livelihood. So --

5 A That's correct.

6 Q -- that's the connection. So have you done any
7 analysis to determine whether the owners of that
8 property would be negatively affected by not being
9 able to participate in the project?

10 A I have not done an analysis in that regard.

11 Q Okay. So if Peggy Holmes, who is renting property to
12 Wendhausen, is relying on lease payments as a source
13 of revenue and not having those lease payments would
14 be a financial hardship for her, that was not part of
15 the consideration made in responding to this request;
16 is that correct?

17 EXAMINER NEWMARK: That's assuming facts
18 not in evidence. We don't know that.

19 MR. NOWICKI: What part?

20 EXAMINER NEWMARK: Whether it's causing --
21 the whole question related to Peggy --

22 MR. NOWICKI: It's just -- the question
23 related to what he took into account and whether or
24 not he took anything like that into account. So let
25 me rephrase the question.

1 Q Let me ask it this way. Did you take into account
2 any financial implications of Peggy Holmes not being
3 able to rent her property to Badger Hollow?

4 A As it refers to my response here?

5 Q Correct.

6 A I think that -- surprisingly, I asked the same
7 question to my mother-in-law, if she took into
8 account what it was going to do to the neighbors
9 prior to her signing up. And so I think indeed that
10 this is a problem that needs to be thought about in
11 advance prior to a project of this size being
12 unleashed on the community.

13 MR. NOWICKI: I'll move to strike the
14 answer as nonresponsive, and I'll re-ask the
15 question if that's okay.

16 EXAMINER NEWMARK: Okay.

17 BY MR. NOWICKI:

18 Q My question was did you take into account any
19 financial implications affecting Peggy Holmes by not
20 being able to rent her property or partici -- I guess
21 participate in the Badger Hollow Solar project?

22 A I think that we looked at how it was going to hurt
23 Mr. Wendhausen primarily.

24 Q Primarily or solely?

25 A I think it was probably primarily.

1 Q Okay. What about Wil-Clar Farms, it's another
2 property owner who had been renting to
3 Mr. Wendhausen, but now is trying to participate in
4 the project. Did you assess -- did you take into
5 account any financial impact on Wil-Clar Farms of not
6 being able to participate in the project?

7 A I'm certainly aware that if any farmer were not able
8 to participate, that it would affect their bottom
9 line, sure.

10 Q Okay. In the answer to number 5, there's a reference
11 to -- there's a statement that says, "Finding
12 available farmland to rent in the area will be even
13 more difficult when so many acres of farmland are
14 leased to Badger Hollow and taken out of production."

15 With the description it will be more --
16 finding that acreage will be more difficult, how will
17 it be more difficult?

18 A There's simply X-amount of ground that you can --
19 that's available to rent. And this is removed from
20 the marketplace.

21 Q So the supply of farmland will go down, correct?

22 A Indeed, yes.

23 Q The demand may stay the same for that farmland,
24 correct?

25 A What farmland? The joint farmland or the farmland

1 that's taken out?

2 Q The demand for farmland in Iowa County.

3 A The demand is dependent on a number of factors. One
4 would be the supply of demand -- the supply of the
5 land. Another factor would be just the potential
6 profitability. If there's no available profit
7 potential, then the cost of obtaining that rented
8 land may be relatively flat.

9 Q With regard to the difficulty in finding available
10 farmland, one of the factors playing into that
11 difficulty is it may cost more to rent farmland
12 because the farmland is more scarce. Do you agree
13 with that?

14 A Well, that's what I was trying to address previously
15 is that at some point in time there's a lid on your
16 availability to pay for the land. And the -- my
17 assumption is for ground of this nature, that it's
18 probably -- the lid is put into effect by the
19 potential profitability.

20 Q Is the lid dependent upon the person who either has
21 or does not have enough money to pay the rent for
22 farmland?

23 A In any case, sure.

24 Q Okay. So if the effect of removing farmland from
25 production is to make the farmland more scarce and

1 more expensive to rent, the other side of that is
2 that the owners of those lands can demand higher
3 rental payments from potential farm -- from farmers
4 who want to rent that property, correct?

5 A I understand what you're saying. But with the
6 potential lid of not only diminishing returns, but
7 diminished returns, that there is an upper level of
8 which most of that farmland is already operating at.
9 And so even if it were -- at some point in time you
10 just can't pay more for the land, and I believe that
11 most of the land is at that level.

12 Q When you say can't pay any more for the land, you're
13 talking about farmers who want to rent land in order
14 to farm it?

15 A That would be correct, yeah.

16 Q Okay. There's -- if you go to data request number 3,
17 it's a few pages prior to that, there's a reference
18 to -- there's a statement that I believe you and your
19 wife may rent some farmland out for the 2019 cropping
20 season rather than farm it yourselves, correct?

21 A That's a possibility, yes. We're wrestling with that
22 right now.

23 Q What would be the reason why you would rent it out
24 instead of farming it yourself?

25 A I have heart problems.

1 Q Would you expect -- if the solar project makes
2 farmland more scarce in Iowa County, do you believe
3 you would be able to rent out your farmland for a
4 higher price than if the farmland was not made more
5 scarce?

6 A I understand your question. But I don't believe
7 that's applicable because, again, we run up against
8 the lid.

9 MR. NOWICKI: That's all the questions I
10 have.

11 EXAMINER NEWMARK: Okay. Thanks. Other
12 parties? Commission staff? Any redirect?

13 MS. OVERLAND: Just a little bit.

14 REDIRECT EXAMINATION

15 BY MS. OVERLAND:

16 Q You recall the just recent discussion about demand
17 for farmland. Does location play a factor in demand?

18 A The primary factor about location would be the area
19 that a lot of the Badger Hollow project covers is
20 flat land that's big parcels and can be more easily
21 run with efficient machines.

22 Q Would -- okay. As far as rental goes, would there be
23 an impact of the Badger Hollow project on the land
24 that is available for rental regarding location?

25 A Well, certainly that -- whatever the acreage is,

1 3,000 or 3,500 acres would not be available to rent.

2 Q And when people rent farmland, do they have an area
3 where it's feasible to rent and farm?

4 A At some point in time your radius is limited by
5 transportation. We typically feel that to move our
6 circuits from one field to another costs about \$300.
7 So every time that you move, you have those attendant
8 costs. And the further that you move, the more that
9 it costs.

10 Q And then at some point it may be not feasible to rent
11 given the distance?

12 A That's correct.

13 MS. OVERLAND: Thank you. That's all.

14 EXAMINER NEWMARK: Okay. Great. Thanks.
15 You're excused.

16 (Witness excused at this time.)

17 EXAMINER NEWMARK: I just want to mention,
18 I think a lot of this topic was covered in testimony
19 in a much -- in a good way, concise and coherent
20 way. So I just want to refer back to Mr. Jewell's
21 testimony for complete answers to those questions.

22 Who's next? Let's take the Kites next.

23 MS. THOMPSON: Do you want to call Kurt
24 after?

25 EXAMINER NEWMARK: It's up to you what

1 order.

2 MS. THOMPSON: He's listening, so I guess
3 this is -- all right. We'll do the Kites, but I
4 just meant in terms of calling him. Since he's
5 listening, do you want to call him when it's his
6 turn?

7 EXAMINER NEWMARK: Yeah.

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1 CASEY AND BRENDA KITE, KITE INTERVENOR WITNESSES,

2 DULY SWORN

3 DIRECT EXAMINATION

4 BY MS. THOMPSON:

5 Q We need to start with could you state your name and
6 address, please.

7 A (Mrs. Kite) I'm Brenda Kite, and I live at 2680
8 County Road G, Cobb, Wisconsin.

9 A (Mr. Kite) Casey Kite, 2680 County Road G, Cobb,
10 Wisconsin, as well.

11 Q And have you prepared and caused to be put in -- I
12 apologize. Have you caused to be prepared and filed
13 your direct testimony, rebuttal and surrebuttal
14 testimony?

15 A (Mrs. Kite) Yes.

16 MS. THOMPSON: And we did add Exhibit 4.
17 Would you like me to bring that into the record now
18 with copies early on, or do you mind if I just file
19 that later?

20 EXAMINER NEWMARK: You'll have to refresh
21 my memory about that.

22 MS. THOMPSON: It was the Iowa County
23 comprehensive plan.

24 EXAMINER NEWMARK: Yes.

25 MS. THOMPSON: I can submit that by Monday

1 or I can provide it now.

2 EXAMINER NEWMARK: Will there be any
3 discussion on the full document? No. You can just
4 do that for Monday, save it for Monday.

5 MS. THOMPSON: Okay. Then I move to put
6 their testimony and exhibits into the record.

7 EXAMINER NEWMARK: Okay. They're already
8 in, so great. So we can proceed with cross. And do
9 we have any questions for the Kites?

10 MR. NOWICKI: No questions.

11 EXAMINER NEWMARK: No questions. Okay.
12 Anybody else? No? Oh, well, after all that. Okay.
13 Well, thanks. You're excused.

14 (Witnesses excused at this time.)

15 EXAMINER NEWMARK: All right. So let's
16 see, before we go to staff, we'll take Citizens
17 Utility Board first.

18 MS. THOMPSON: Do you want to do Kurt?

19 EXAMINER NEWMARK: Oh, geez. Why am I so
20 off today?

21 MS. THOMPSON: That's all right.

22 EXAMINER NEWMARK: Something about using
23 the phone maybe.

24 (Off the record to establish
25 teleconference with Kurt Kielisch.)

1 KURT KIELISCH, KITE INTERVENOR WITNESS, DULY SWORN

2 DIRECT EXAMINATION

3 BY MS. THOMPSON:

4 Q Please state your name for the record and your job
5 description.

6 A My name is Kurt Carl Kielisch, and I am a forensic
7 real estate appraiser.

8 Q And, Mr. Kielisch, did you submit direct testimony
9 and rebuttal testimony and exhibits into this record?

10 A Yes.

11 MS. THOMPSON: As part of that, we have a
12 couple corrections to make that we would like to
13 make now.

14 EXAMINER NEWMARK: Okay.

15 MS. THOMPSON: In Mr. Kielisch's report,
16 on page 17, there is a reference to the acreage of
17 the property. There was a mistyping, the number of
18 the total acreage at the bottom. It does not change
19 any part of the report. I'm just replacing that
20 with a new number.

21 EXAMINER NEWMARK: Okay.

22 MS. THOMPSON: I think that's been brought
23 up in testimony. The other correction that we have
24 is in surrebuttal. I believe it's on page 17. Any
25 references to distance of wind -- let me just pull

1 up page 17 so I can -- and it may be another
2 reference in another spot in there. But he
3 references the closest wind farm as being 2,600
4 feet, and it's really 8,600 from the Kite property.

5 THE WITNESS: That's correct, yes.

6 MS. THOMPSON: And so we will correct that
7 in his testimony and insert that into the record.

8 EXAMINER NEWMARK: Okay. So was that his
9 direct you said?

10 MS. THOMPSON: It was in his surrebuttal.

11 MR. NOWICKI: Page 7.

12 EXAMINER NEWMARK: Oh, 7.

13 MS. THOMPSON: Sorry. I don't know why I
14 wrote down 17.

15 EXAMINER NEWMARK: So re-file his
16 surrebuttal. So in terms of the exhibit, that's
17 Kielisch 2?

18 MS. THOMPSON: Correct, yes, and that will
19 be on page 17.

20 EXAMINER NEWMARK: So it's in the table
21 itself.

22 MS. THOMPSON: It's just that the 3.73
23 should just say 3.73 below it as well. It was just
24 an incorrect -- in that chart, that assessment
25 chart, you see the 3.73. It should just say 3.73

1 below it. But it does not have an impact on his
2 analysis. It was just a typo.

3 EXAMINER NEWMARK: Okay. All right. So
4 we'll leave it in the way it is in terms of the
5 exhibit. I don't think it changes...

6 MS. THOMPSON: Would you like me to submit
7 a clean report with that correction?

8 EXAMINER NEWMARK: Yeah. So that total is
9 across the row --

10 MS. THOMPSON: Well, it doesn't impact or
11 change any of the other numbers.

12 EXAMINER NEWMARK: Okay. Yeah. I think
13 we should probably just replace it so it doesn't end
14 up being confusing somewhere down the road. So just
15 file a new report or revised report with the
16 correction.

17 MS. THOMPSON: Sounds good.

18 EXAMINER NEWMARK: Unfortunately, this
19 document will sit alone on ERF and the transcript
20 will sit in another place; and, you know, thinking
21 about the worst that can happen, I'm sure it will
22 happen. All right.

23 MS. THOMPSON: Okay. I will make the
24 change and re-submit. So with that correction, I
25 will move his testimony in the record.

1 EXAMINER NEWMARK: Okay. So all of that's
2 in the record already.

3 MS. THOMPSON: I do have a few questions
4 for Mr. Kielisch initially.

5 Q Mr. Kielisch, Mr. MaRous testified earlier, and I
6 have some follow-up questions as relates to his
7 testimony.

8 The first question I'd like to ask you
9 relates to his reference to the cost approach you
10 used in your analysis. He claims that your use of
11 the cost approach is a guide, not a resolution. How
12 do you respond to that?

13 A All three approaches are acceptable: cost, the
14 comparable sales and the income approach. All three
15 if an appraiser and -- if you will, an analysis of
16 what the property value is. A cost approach is not a
17 guide. And also often misunderstood. The cost
18 approach is a market approach by its very nature. So
19 I would disagree with his position.

20 Q Okay. The next question I have is -- it relates to
21 your use of the word "taking" in your report. You
22 look at the before and after of a property and use
23 the word "taking"; and then it is also used in your
24 analysis when you reach your end result indicating
25 that the Kites will be impacted by a reduction of 40

1 if that would be more helpful.

2 EXAMINER NEWMARK: Okay. Well, whatever
3 we can do to make things more clear, we should.

4 MS. THOMPSON: I'm fine to keep it in the
5 record, or make it more clear.

6 EXAMINER NEWMARK: Why don't you try.

7 BY MS. THOMPSON:

8 Q All right. Mr. Kielisch, in your report, there's a
9 reference of an awareness that the utilities -- well,
10 strike that. I'll take out your report.

11 You're aware that there's a buy/sell in
12 process with two utilities who intend to purchase it;
13 and you've looked at the Badger Hollow application,
14 and in there they also indicate that there is an
15 intent of two utilities to purchase half of this
16 project.

17 Do you believe that that has to be taken
18 into account in your analysis when you are appraising
19 the value of the Kite property?

20 A Well, it does play a role, you know, it's not a major
21 role, because the major role is the two, before and
22 after value. And it's before the issue and after the
23 issue. That's how I look at it.

24 Q Okay. So when you use taking in your report, it is
25 primarily looking at before and after and it has not

1 been a heavily-relied-on aspect that the property
2 will be potentially purchased by two utilities, that
3 was not taken into account as a significant portion
4 of your analysis; is that --

5 A That's correct.

6 Q Okay.

7 A That's correct.

8 Q Okay. The next issue -- Mr. MaRous also took issue
9 with the way you did your analysis in that you did
10 not take adequate account of the fact that we had a
11 recession in 2008. Your report is dated 2018. How
12 do you respond to that?

13 A The response is multiple. First off, it's at the
14 market. The market takes care of the market. And by
15 that I mean the values in 2018 are by its nature
16 already taking in consideration any events that have
17 taken place in the -- in the past. So any type of
18 analysis of a property in its before value is as of
19 the date, in this case, the date in November 2018;
20 and they use values that sold in that very time
21 period. Those sale prices have already taken in
22 consideration any type of effects on the market,
23 positively or negatively.

24 So to go back and try to do some type of
25 analysis on the impact of the recession is really a

1 waste of your time and your effort. Because the
2 market value is what the market value is today.

3 Q Okay. Thank you. I have one more question.
4 Mr. MaRous critiqued your report and said it is not
5 logical to have a 5 percent adjustment for wind
6 turbines and a 40 percent impact for solar. I think
7 we've already talked about the change in the error in
8 your report. But how would you respond to that?

9 A Okay. What I think has happened here and,
10 unfortunately, Mr. MaRous did not quite understand
11 the analysis that I was doing. And the analysis I
12 was doing was in the before condition, taking in
13 consideration the impact of the wind turbines who
14 are -- who's approximately 8,600 feet away, they are
15 213 feet tall, and there's approximately 20 wind
16 turbines; that, you know, that distance and their
17 height has a nominal impact. It still has an impact,
18 but a nominal impact. And that's the before
19 condition.

20 And then when I'm considering the wind
21 farms in the after condition, you have to consider
22 everything moved forward now in very close proximity
23 to the subject property because that's the
24 comparison, the like-kind analysis, that I did. In
25 that case, the wind turbines, if they were that close

1 and they were the typical wind turbines of what the
2 studies that I was involved in and others deal with,
3 that the impact would be severe as I indicated in my
4 summary page in the direct testimony.

5 So I think what is happening here is that
6 we have two parts of the equation which we're getting
7 mixed up, if you will. The before value takes in
8 consideration the long distance, approximately 1.6
9 miles away, of the wind turbines and their smaller
10 stature; and the after condition and like-kind
11 analysis if the solar farm was a wind farm, then
12 those wind turbines, which would be more contemporary
13 in nature, approximately 465 feet tall, would be in
14 very close proximity to the subject property,
15 therefore, would have a very dynamic impact to that
16 subject property. So those are the two ways I was
17 looking at it in the before and the after analysis.

18 MS. THOMPSON: Okay. Thank you.

19 THE WITNESS: You're welcome.

20 EXAMINER NEWMARK: Is the witness
21 available for cross?

22 MS. THOMPSON: The witness is available
23 for cross.

24 EXAMINER NEWMARK: Applicants?

25 MR. GARDON: Can we just have a minute?

1 EXAMINER NEWMARK: Sure. Off the record.

2 (Discussion off the record.)

3 MR. NOWICKI: No questions.

4 EXAMINER NEWMARK: All right. Thanks.

5 Any other parties, questions? Commission staff?

6 No? Okay. Well, you're excused, Mr. Kielisch.

7 We'll disconnect.

8 THE WITNESS: Okay. Thank you very much,

9 Your Honor.

10 EXAMINER NEWMARK: Okay. Take care.

11 (Witness excused at this time.)

12 EXAMINER NEWMARK: All right. Great. So

13 I believe we're at CUB.

14 MS. HANSON: Citizens Utility Board calls

15 Corey Singletary.

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1 COREY S.J. SINGLETARY, CUB WITNESS, DULY SWORN

2 DIRECT EXAMINATION

3 BY MS. HANSON:

4 Q Good afternoon. Could you please state your name for
5 the record.

6 A Corey S.J. Singletary.

7 Q Mr. Singletary, are you employed with the Citizens
8 Utility Board as utility analyst?

9 A I am.

10 Q And in the 100 docket, did you prepare and file or
11 cause to be filed CUB's direct, rebuttal and
12 surrebuttal testimony as well as seven exhibits?

13 A I did.

14 Q And if I were to ask you the same questions set forth
15 in your testimony today, would your answers be the
16 same?

17 A They would.

18 Q And are the exhibits complete and correct to the best
19 of your knowledge?

20 A Yes.

21 Q Do you have anything that you would like to add?

22 A Not at this time.

23 MS. HANSON: Okay. Mr. Singletary is
24 available for questions.

25 EXAMINER NEWMARK: Okay. Do we have

1 questions?

2 MR. NOWICKI: No questions.

3 MR. RUSZKIEWICZ: No.

4 EXAMINER NEWMARK: Any other parties?
5 Commission staff?

6 MR. RUSZKIEWICZ: Commission staff calls
7 Mr. Dan Grant.

8 EXAMINER NEWMARK: Oh, sorry.

9 MR. RUSZKIEWICZ: I said no, Your Honor.
10 I'm sorry. I want to move along here.

11 EXAMINER NEWMARK: No questions. One
12 thing at a time. Make sure we cross all the Ts.
13 Yeah. You're good. You're excused. Thanks.

14 (Witness excused at this time.)

15 EXAMINER NEWMARK: Well, in anticipation
16 of that, I think we can move to Commission staff.

17 MR. RUSZKIEWICZ: Again, I'd like to call
18 Daniel Grant.

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1 DANIEL GRANT, STAFF WITNESS, DULY SWORN

2 DIRECT EXAMINATION

3 BY MR. RUSZKIEWICZ:

4 Q Please state your name for the record.

5 A Daniel Grant.

6 Q And what is your position at the Public Service
7 Commission of Wisconsin?

8 A I'm a senior engineer working for the Division of
9 Energy Regulation with the Public Service Commission.

10 Q Did you file direct and surrebuttal testimony in the
11 100 docket and direct and surrebuttal testimony in
12 the 101 dockets?

13 A Yes, I did.

14 Q Do you have any additional corrections to your
15 testimony at this time?

16 A Not at this time.

17 Q Okay. If you were asked the same questions today,
18 would you provide the same answers that you provided
19 in your testimony including the corrections we
20 already discussed today?

21 A Yes, I would.

22 Q And are your responses true and correct to the best
23 of your knowledge?

24 A Yes, they are.

25 Q Do you have anything you'd like to add?

1 A Not at this time.

2 MR. RUSZKIEWICZ: The witness is
3 available.

4 EXAMINER NEWMARK: Questions?

5 MR. NOWICKI: No questions.

6 EXAMINER NEWMARK: Other parties? Oh,
7 yes.

8 MS. OVERLAND: I do have a couple
9 questions.

10 CROSS-EXAMINATION

11 BY MS. OVERLAND:

12 Q Good afternoon, Mr. Grant.

13 A Good afternoon.

14 Q Now, you -- in your testimony you were dealing with
15 decommissioning. And have you ever worked on a
16 decommissioning plan for a project?

17 A No, I have not.

18 Q What resources did you review regarding
19 decommissioning?

20 A This -- I did not actually look at specific
21 decommissioning resources. This was a suggested
22 order point that we thought may be appropriate for
23 this project. So I as the engineer put that in for
24 consideration by the Commission.

25 Q Suggested by -- ?

1 A We as staff thought, after reviewing comments from
2 the public that were addressed at the environmental
3 scoping meetings as well as written comments, that it
4 might be appropriate based on the fact that certain
5 folks have raised concerns about decommissioning and
6 the thought that there was a lack of a
7 decommissioning plan, that it might be appropriate
8 for that order point to be suggested for the
9 Commission's consideration.

10 Q And that order point would put the development of the
11 decommissioning plan after the order, correct?

12 A I believe that it was intended to be -- that we would
13 be working -- that we would request the Badger Hollow
14 work with staff to develop a decommissioning plan;
15 and that would be something that would be looked at
16 after the order perhaps, but...

17 Q Why was the -- why was it proposed to be after the
18 order rather than before the order?

19 A I guess I would say that it would be up to the
20 Commissioners to decide if they want to even include
21 an order point, and then we would look at that in the
22 timing -- or we would look at the timing with respect
23 to that decommissioning plan based on whatever the
24 Commissioners may decide.

25 So it's not even necessarily true that the

1 Commissioners would even decide that it would be
2 appropriate to have a decommissioning order. So that
3 would be speculation on my part.

4 Q Was it an option to have the Commission consider
5 requiring a plan be available and vetted before an
6 order was done? Is that an option?

7 A I am not a Commissioner, so I can't really speak as
8 to what the Commissioners may want to do. We could
9 certainly possibly look into that as Commission staff
10 and make a proposal to that effect.

11 Q And then it is correct that there is no requirement
12 for a decommissioning plan or financial assurance
13 prior to a CPCN order?

14 A To the best of my knowledge, that is correct.

15 Q Is there anything prohibiting?

16 A I'm not aware of anything that would prohibit it.

17 Q In drafting that EA, did you look at -- environmental
18 assessment, did you look at any decommissioning plans
19 from other projects?

20 A No, I did not.

21 Q And did you look at any decommissioning regulations
22 from other jurisdictions like counties or states?

23 A No, I did not.

24 Q And then did you look at financial assurance in any
25 other states, practices of how other states handle

1 that?

2 A No, I did not.

3 MS. OVERLAND: I have no further
4 questions.

5 EXAMINER NEWMARK: Okay. Other parties?
6 Any redirect?

7 MR. RUSZKIEWICZ: Just a couple clarifying
8 questions.

9 REDIRECT EXAMINATION

10 BY MR. RUSZKIEWICZ:

11 Q The discussion about what was looked at in the EA,
12 you did work with other Commission staff?

13 A Yes.

14 Q You weren't the sole author of that EA?

15 A Yes.

16 Q I just wanted to verify. The other question is in
17 your analysis, did you look at wind generation when
18 you were looking at decommissioning?

19 A I did not look at wind generation or decommissioning
20 associated with wind generation.

21 Q Is there anything else you'd like to add in further
22 clarification based on the testimony you just
23 provided?

24 A Not at this time.

25 MR. RUSZKIEWICZ: Thank you.

1 EXAMINER NEWMARK: Okay. You're excused.

2 Thanks.

3 (Witness excused at this time.)

4 EXAMINER NEWMARK: Mr. Rahn.

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1 PAUL RAHN, STAFF WITNESS, DULY SWORN

2 DIRECT EXAMINATION

3 BY MR. RUSZKIEWICZ:

4 Q Please state your name for the record.

5 A Paul Rahn.

6 Q And what is your position at the Public Service
7 Commission of Wisconsin?

8 A I'm an environmental and analysis review specialist
9 in the Division of Energy Regulation.

10 Q Did you file direct testimony and surrebuttal
11 testimony in the 100 docket and direct testimony in
12 the 101 docket?

13 A Yes.

14 Q Did you also file exhibit marked Exhibit PSC Rahn 1
15 in the 100 docket?

16 A Yes, I did.

17 Q Do you have any additional corrections to your
18 testimony or exhibit at this time?

19 A No, I do not.

20 Q Okay. If you were asked the same questions today,
21 would you provide the same answers that you provided
22 in your testimony?

23 A Yes, I would.

24 Q And to the best of your knowledge, those answers are
25 true and correct?

1 A Yes.

2 Q Okay. Do you have anything that you would like to
3 add based on what was stated in testimony today?

4 A No, not at this time.

5 Q Okay. And did you also file the EA as an exhibit?

6 A Yes, that has been filed.

7 MR. RUSZKIEWICZ: Okay. With that then,
8 the witness is available for cross.

9 EXAMINER NEWMARK: Okay. Questions?

10 MR. NOWICKI: No questions.

11 EXAMINER NEWMARK: Other parties? Go
12 ahead.

13 CROSS-EXAMINATION

14 BY MS. OVERLAND:

15 Q Just a couple. Good afternoon. On your direct
16 page 5, you're talking about birds and migratory
17 paths. Let me see if I... The bottom of page 5,
18 line 18, Commission staff are unaware of any
19 comparable studies, et cetera. Are you there?

20 A Yes.

21 Q Did you do a search for studies about solar projects
22 and birds just generally to see what was out there?

23 A I didn't personally. There's other staff at the
24 Commission that did do the search.

25 Q Do you know if anyone on staff did a general search

1 of --

2 A I believe so.

3 Q And did not turn up any studies?

4 A Not for midwest area that I'm aware of.

5 Q Okay. Do you know if they turned up any studies in
6 any other areas?

7 A I believe probably a southwest U.S. study. I don't
8 have direct knowledge what they found.

9 Q Okay. Would that be contained in the EA?

10 A There may be references there to some of those
11 studies.

12 MS. OVERLAND: I have no further
13 questions.

14 EXAMINER NEWMARK: Okay. Other parties?
15 Redirect?

16 MR. RUSZKIEWICZ: Nothing.

17 EXAMINER NEWMARK: You can't just end like
18 that. Thanks. You're excused.

19 (Witness excused at this time.)

20 EXAMINER NEWMARK: All right. Well, at
21 this point we have all the witnesses checked in.
22 Don't trust me for that. Okay. So I think we have
23 our orders on all the re-filings and we'll expect
24 those midday on Monday. And we do have some other
25 exhibits, late exhibits to accept comments and data

1 requests. I can't think of anything else at this
2 time.

3 MR. RUSZKIEWICZ: Your Honor, I think
4 there is a pending request on the schedule that we
5 should talk about.

6 EXAMINER NEWMARK: Okay.

7 MR. RUSZKIEWICZ: It's actually by --
8 Ms. Overland filed in the latest motion, I believe,
9 or response.

10 EXAMINER NEWMARK: Oh, is it still
11 pending? Because I asked for any other motions at
12 the beginning.

13 MR. RUSZKIEWICZ: Yeah. I think that was
14 passed over; but, yeah, I think that's still out
15 there.

16 EXAMINER NEWMARK: Okay. So what do we
17 have?

18 MS. OVERLAND: Looking for an extra week.
19 And there is -- staff did ask for an extension at --
20 that 180-day extension. So a week would be greatly
21 helpful with all of this magnitude of documents that
22 flooded in.

23 EXAMINER NEWMARK: For what?

24 MS. OVERLAND: It's for the brief.

25 EXAMINER NEWMARK: So the initial brief?

1 MS. OVERLAND: Yes. And then pushing the
2 other back.

3 MR. RUSZKIEWICZ: Your Honor, we'd like to
4 clarify that the 180-day extension is for the
5 statutory deadlines for issuing the certificate.
6 The Commission staff would oppose any extension of
7 the briefing schedule. The schedule is what it is
8 and the parties agreed to it; and we completed the
9 hearing, so we'd like to keep this moving.

10 MR. NOWICKI: The applicant also strongly
11 opposes extending the briefing schedule which has
12 been in place for quite some time including the
13 development of the record. The request for the
14 extension related to the back-and-forth regarding
15 whether JJI is a corporation or not which is really
16 a circumstance of JJI's own doing in being unclear
17 about that.

18 So we worked to get this hearing done
19 today and want to keep it on track with the schedule
20 that was set. We believe that's a fair schedule.

21 MS. OVERLAND: Your Honor, that wasn't
22 just about that last motion. It was about the
23 multitude of motions that have taken some time to
24 deal with.

25 EXAMINER NEWMARK: Okay. Well, I know

1 we're dealing with a tight schedule and -- but I'm
2 not inclined to grant that relief at this time. So
3 I think we'll need to plug on with the current
4 schedule and do the best you can. Okay. So
5 anything else? No? Thanks.

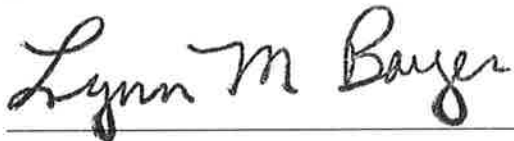
6 (The hearing concluded at 3:32 p.m.)
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1 STATE OF WISCONSIN)

2 MILWAUKEE COUNTY)

3

4 I, LYNN M. BAYER, RPR, CM, Registered
5 Professional Reporter, Certificate of Merit, with the firm
6 of Halma Reporting Group, Inc., 207 East Michigan Street,
7 Milwaukee, Wisconsin, do hereby certify that I reported
8 the foregoing proceedings had on January 16, 2019, and
9 that the same is true and correct in accordance with my
10 original machine shorthand notes taken at said time and
11 place.

12 
13 _____

14 Lynn M. Bayer

15 Registered Professional Reporter

16 Certificate of Merit

17

18 Dated this 18th day of January, 2019.

19 Milwaukee, Wisconsin.

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